11-688

1877

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 134.

ELISHA FOOTE, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF PIKE, IN THE STATE OF MISSOURI.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED APRIL 16, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 134.

ELISHA FOOTE, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF PIKE, IN THE STATE OF MISSOURI.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Writ of error	1	1
Return to writ	2	1
Citation	3	1
Amended petition	5	2
Demurrer to amended petition	100	48
Demurrer sustained	101	49
Judgment	101	49
Certificate of judges	101	49
Bond	103	50
Clerk's certificate	105	51

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the September term, 1876, thereof, between Elisha Foote, plaintiff, and the County of Pike, in the State of Missouri, defendant, a manifest error hath happened to the great damage of the said plaintiff, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fifth day of March, in the year of our Lord one thousand eight hundred and seventy-seven.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.]

M. M. PRICE,
Clerk Circuit Court United States, Eastern District of Missouri,
By A. P. SELBY,
Deputy.

Allowed by—

SAMUEL TREAT, *Judge.*

2 *Return to writ.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the *the* record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at office in the city of St. Louis, this 7th day of March, A. D. 1877.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY,
Deputy.

3, 4 The United States of America, to the County of Pike, in the State of Missouri, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein Elisha Foote is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mention, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this 5th day of March, in the year of our Lord one thousand eight hundred and seventy-seven.

SAMUEL TREAT,
Judge United States Circuit Court, Eastern District of Missouri.

Service of the above notice is hereby accepted March 16th, 1877.

COUNTY OF PIKE, MO.,
By THOS. J. C. FAGG,
Att'y.

5, 6 UNITED STATES OF AMERICA,
Eastern District of Missouri, set:

In the circuit court of the United States for the eastern district of Missouri.

Be it remembered that at an adjourned day of the circuit court of the United States in and for said district, begun and holden on the 9th day of February, A. D. 1877, there was filed a certain amended petition, which said petition is in the words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States for the eastern district of Missouri. September term, 1876.

ELISHA FOOTE, PLAINTIFF,
vs.
THE COUNTY OF PIKE, IN THE STATE OF MISSOURI, defendant.

Plaintiff respectfully represents to the court that he is a citizen of the State of New York, and that the defendant, being a municipal corporation composed of citizens of the State of Missouri, is a citizen of the said last named State.

7, 8 Plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 17, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond s dated on the first day of November, A. D. 1871, acknowledged itself ndebted and firmly bound unto the Clarksville and Western Railroad

Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of one thousand dollars, which sum the said county of Pike, for and on the account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer fifty dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 17.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer, and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

9, 10 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 18, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing un-

der the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of one thousand dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond and coupons attached to said company for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer fifty dollars, at the office of the county treasurer, on the first day of July, 1876, it being six months' interest on said bond No. 18.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

11, 12 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing-obligatory, called and known as Pike County bond No. 19, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a rail-

road through the township of Calumet, in the said county of Pike, in the sum of one thousand dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer fifty dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 19.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court and prays judgment for the amount thereof, together with interest and damages thereon.

13, 14 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing-obligatory, called and known as Pike County bond No. 20, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike,

in the sum of one thousand dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer fifty dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 20.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer, and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

15, 16 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 21, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of one thousand dollars, which sum the said County of Pike,

for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer fifty dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 21.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

17, 18 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 22, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of one thousand dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by

said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer fifty dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 22.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

19, 20 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 23, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of one thousand dollars, which sum the said county of Pike for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office

of the county treasurer of said county of Pike, 10 years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond and coupons attached to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer fifty dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 23.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer, and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

21, 22 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 24, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there only organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of one thousand dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond,

at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri entitled 'An act to facilitate the constructien of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond and coupons attached to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer fifty dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 24.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer, and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

23, 24 And for another and further cause of action plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 25, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of one thousand dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond at the rate of ten per cent. per annum, payable semi-annually on the

first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer fifty dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 25.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

25, 26 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 31, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at

said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877, and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 31.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

27,28 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 32, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated and delivered the said bond and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 32.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

29, 30 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 33, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is re-

cited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the the office of the county treasurer on the first day of July, A. D. 1876, it being six months' interest on said bond No. 33.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

31,32 And for another and further cause of action plaintiff further says that the defendant on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 34, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an

order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 34.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer, and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

33, 34 And for another and further cause of action plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 35, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that " this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of

an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 35.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer, and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

35, 36 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 36, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to fa-

cilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 36.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

37, 38 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 37, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,'

and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty five dollars, at the office of the county treasurer, on the first day o. July, A. D. 1876, it being six months' interest on said bond No. 37.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

39, 40 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November; A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 38, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a

vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock of the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 38.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

41, 42 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 39, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more

than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 39.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

43, 44 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 40, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote

of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 40.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof, demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

45, 46 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D, 1871, by its certain writing obligatory, called and known as Pike County bond, No. 41, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 41.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

47, 48 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 42, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated

and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 42.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

49, 50 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 43, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in be-

half of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877, and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 43.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

51, 52 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 44, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per. cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and there

after caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiffs says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 44.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

53, 54 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 45, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the

said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 45.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

55, 56 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond No. 26, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and

inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 26.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

57, 58 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond No. 65, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the Township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and

on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 65.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

59, 60 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 66, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have

been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 66.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

61, 62 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 67, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and

received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 67.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

63, 64 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 68, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated and delivered the said bond and coupons attached to said company, for value and in payment of a subscription made by said county in behalf of said township, to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and re-

peatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it b ing six months interest on said bond No. 68.

Plaintiff says that on the day and year last aforesaid, the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

65, 66 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 69, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of s uid county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county, in behalf of said township, to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township, for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and

repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 69.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

67, 68 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 70, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said com-

pany, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 70.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

69, 70 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 71, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said com-

pany, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 71.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

71, 72 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 72, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond and for value received to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery, at said office of the county treasurer, of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond and coupons attached to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer, twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 72.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

73, 74 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 73, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged

itself to owe, and promised to pay to bearer, twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 73.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

75, 76 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 74, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the

office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 74.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

77, 78 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 75, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe and promised to pay to bearer twenty five dollars, at the

office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 75.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer, and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

79, 80 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 76, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 76.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

81, 82 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 77, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 77.

Plaintiff says that on the day and year last aforesaid the said coupon

was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

83, 84 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 79, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said county of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof, up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10 hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe, and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 79.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer,

and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

85, 86 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond, No. 9, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of the said county of Pike, and sealed with the seal of the county court of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of five hundred dollars, which sum the said County of Pike, for and on account of Calumet Township, in said county, promised by said bond, and for value received, to pay to the said company or bearer, at the office of the county treasurer of said county of Pike, ten years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe and promised to pay to bearer twenty-five dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 9.

Plaintiff says that on the day and year last aforesaid, the said coupon was duly presented for payment at the office of said county treasurer,

and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

Plaintiff states that the aggregate of the said coupons is twelve hundred and twenty dollars, for which he asks judgment, with interest, damages, and costs.

HENDERSON & SHIELDS,
For Plaintiff.

87 Plaintiff, for a further cause of action in this behalf, says that he is the owner, holder, and bearer for value of certain other coupons for interest, each for fifty dollars, each of said coupons being numbered "10" on the face thereof, which coupons are now detached from certain other bonds, numbered respectively as follows, to wit, No. 40, 9, 37, 38, 48, 1, 2, 3, 4, 5, 6, 32, 36, 39, 47, 49, 50, each of said bonds being dated on the first day of November, A. D. 1871, which said bonds were, each and all, issued and delivered by the defendant at the time and in the manner mentioned in the first count of this petition, for the same purposes and to the same company therein named, and for the township of Calumet, in said county of Pike; the said bonds being a part of the same issue, containing the same recitals, and issued for same purposes and under the same circumstances as recited in the first count of this petition, by each of which said coupons the defendant acknowledged itself to owe and promised to pay to bearer fifty dollars, at the office of the county treasurer of the said Pike County, on the first day of July, 1876, it being six months' interest on said bonds respectively, and said coupons each and all were duly presented for payment at the office of said county treasurer aforesaid, on the day of the maturity thereof, and payment of each and all of said coupons was then and there refused by defendant; wherefore plaintiff prays judgment for the total amount of said coupons, to wit, eight hundred and fifty dollars, with interest thereon from maturity as aforesaid, with costs.

And plaintiff, for a further cause of action in this behalf, says that he is the owner, holder, and bearer for value of other coupons for interest, each for twenty-five dollars, each of said coupons being numbered on the face thereof "10," and bearing also the number of bond hereinafter named, which said coupons are now detached from certain other

88 bonds numbered respectively as follows, to wit, No. 18, 20, 21, 22, 23, 24, 25, 26, 82, 83, 92, 93, 10, 12, 28, 9, 11, 49, 35, 1, 96, 54, 56, 85, 86, 47, 16, 87, 88, 97, 98, 9, 79, which said bonds were each and all issued and delivered by the defendant, at the time and in the manner mentioned in the first count in this petition, for the same purposes and to the same company therein named, and for the township of Calumet in said county of Pike; the said bonds being a part of the same issue, containing the same recitals, and issued for same purposes and under the same circumstances as recited in the first count of this petition, by each of which coupons the defendant acknowledged itself to owe and promised to pay to bearer twenty-five dollars, at the office of the county treasurer of the said Pike County, on the first day of July, 1876, it being six months' interest on said bonds respectively, and said coupons were each and all duly presented for payment at the office of said county treasurer aforesaid on the day of the maturity thereof, and payment of each and all of said coupons was then and there refused by defendant; wherefore plaintiff prays judgment for the total amount of said coupons,

to wit, eight hundred and twenty five dollars, with interest thereon, from maturity aforesaid, with costs.

And plaintiff, for a further cause of action in this behalf, says that he is the owner, holder, and bearer for value of other coupons for interest, each for fifty dollars, each of said coupons being numbered on the face thereof "11," and bearing also the number of the bond hereinafter named, which said coupons are now detached from certain other bonds, numbered respectively as follows, to wit, No. 1, 2, 3, 37, 38, 48, 9, 32, 36, 39, 47, 49, 50, 17, 18, 19, 20, 21, 22, 23, 24, 25, 4, 5, 6, which said bonds were each and all issued and delivered by the defendant at the time and in
the manner mentioned in the first count in this petition, for the
89 same purposes and to the same company therein named, and for the township of Calumet in said county of Pike; the said bonds being a part of the same issue, containing the same recitals, and issued for same purposes and under the same circumstances as recited in the first count of this petition, by each of which coupons the defendant acknowledged itself to owe and promised to pay to bearer fifty dollars, at the office of the county treasurer of the said Pike County, on the first day of January, 1877, it being six months' interest on said bonds respectively, and said coupons each and all were duly presented for payment at the office of said county treasurer aforesaid on the day of the maturity thereof, and payment of each and all of said coupons was then and there refused by defendant; wherefore plaintiff prays judgment for the total amount of said coupons, to wit, twelve hundred and fifty dollars, with interest thereon from maturity as aforesaid, with costs.

And plaintiff, for a further cause of action in this behalf, says that he is the owner, holder, and bearer for value of certain other coupons for interest, each for twenty-five dollars, each of said coupons being numbered on the face thereof "11," and bearing also the number of bond hereinafter named, which said coupons are now detached from certain other bonds, numbered respectively as follows, to wit, No. 96, 18, 20, 21, 22, 23, 24, 25, 26, 82, 83, 92, 93, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 9, 79, 16, 87, 88, 97, 98, which said bonds were each and all issued and delivered by the defendant at the time and in the manner mentioned in the first count in this petition, for the same purposes and to the same company therein named, and for the township of Calumet in said county of Pike, the said bonds being a part of the same issue, containing the same recitals and issued for same purposes and under the same circumstances
as recited in the first count of this petition, by each of which
90 coupons the defendant acknowledged itself to owe and promised to pay to bearer twenty-five dollars, at the office of the county treasurer of the said Pike County, on the first day of January, 1877, it being six months' interest on said bonds respectively, and said coupons each and all were duly presented for payment at the office of said county treasurer aforesaid on the day of the maturity thereof, and payment of each and all of said coupons was then and there refused by defendant; wherefore plaintiff prays judgment for the total amount of said coupons, to wit, twelve hundred and twenty-five dollars, with interest thereon from maturity aforesaid, with costs.

91 And for another and further cause of action, plaintiff further says that the defendant, on the first day of November, A. D. 1871, by its certain writing obligatory, called and known as Pike County bond No. 4, signed by A. G. Griffith, then presiding justice of the county court of said county of Pike, and by H. C. Campbell, then clerk of the county court of said county of Pike, and sealed with the seal of the county court

of said county, which said bond is dated on the first day of November, A. D. 1871, acknowledged itself indebted and firmly bound unto the Clarksville and Western Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad through the township of Calumet, in the said county of Pike, in the sum of one thousand dollars, which sum the said county of Pike, for and on account of Buffalo Township, in said county, promised by said bond, and for value received, to pay to the said county or bearer, at the office of the county treasurer of said county of Pike, twenty years after the date thereof, with interest thereon from the date of said bond, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July of each year, on the presentation and delivery at said office of the county treasurer of the coupons of interest thereto attached.

And plaintiff says that in said bond, and as a part thereof, it is recited and declared that "this (the said) bond is issued pursuant to an order of the county court of said county of Pike, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the voters of said township," which said vote was taken at a special election duly held for that purpose.

The plaintiff further avers that the said county issued, negotiated, and delivered the said bond, and coupons attached, to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, and thereafter caused the necessary taxes to be collected from year to year in the said township for the payment of the coupons on said bond, and on all other bonds of the same issue, from the date of the issue thereof up to and inclusive of the first day of January, 1877; and that nine of the coupons attached to said bond, including those due in the years 1872, 1873, 1874, 1875, and on the first day of January, 1876, have been duly and regularly paid; and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company, and in the management and direction thereof.

Plaintiff says that by interest coupon numbered 10, hereto attached, being a part of said bond by its terms, the said defendant acknowledged itself to owe and promised to pay to bearer fifty dollars, at the office of the county treasurer, on the first day of July, A. D. 1876, it being six months' interest on said bond No. 4.

Plaintiff says that on the day and year last aforesaid the said coupon was duly presented for payment at the office of said county treasurer, and payment thereof demanded of said treasurer; and the said treasurer refused to pay the same.

Plaintiff says he is the owner and bearer of said coupon for value, and now brings the same into court, and prays judgment for the amount thereof, together with interest and damages thereon.

92

93 And plaintiff, for a further cause of action in this behalf, says that he is the owner, holder, and bearer for value of certain other coupons for interest, each for fifty dollars, each of said coupons being numbered on the face thereof, "10," and bearing also the number of the bond hereinafter named, which said coupons are now detached from certain other bonds, numbered respectively as follows, to wit, 1, 19, 20, 21, 22, 23, 24, 25, 2, 3, 5, and 17, 6, 7, the aforesaid bonds being dated on

the first day of November, A. D. 1871, payable twenty years after date thereof, each of said bonds being for one thousand dollars, which said bonds were each and all dated, issued, and delivered by the defendant at the time and in the manner mentioned in the first count in this petition, for the same purposes and to the same company therein named, and for the township of Buffalo, in said county of Pike; the said bonds being a part of the same issue, containing the same recitals and issued for same purposes, and under the same circumstances as recited in the next preceding count of this petition; by each of which coupons the defendant acknowledged itself to owe and promised to pay to bearer fifty dollars, at the office of the county treasurer of the said Pike County, on the first day of July, 1876, it being six months' interest on said bonds respectively, and said coupons each and all were presented for payment at the office of said county treasurer aforesaid on the day of the maturity thereof, and payment of each and all of said coupons was then and there refused by defendant; wherefore plaintiff prays judgment for the total amount of said coupons, to wit, seven hundred dollars, with interest thereon from maturity as aforesaid, with costs.

And plaintiff, for a further cause of action in this behalf, says that he is the owner, holder, and bearer for value of certain other coupons for interest, each for twenty-five dollars, each of said coupons being
94 numbered on the face thereof, "10," and bearing also the number of bond hereinafter named, which said coupons are now detached from certain other bonds, each for five hundred dollars, payable twenty years after the date thereof, and dated on the first day of November, 1871, which said bonds are numbered respectively as follows, to wit, No. 2, 39, 40, 50, which said bonds were each and all dated, issued, and delivered by the defendant at the time and in the manner mentioned in the first count of this petition, for the same purposes, to the same company therein named, and for the township of Buffalo, in said county of Pike; the said bonds being a part of the same issue, containing the same recitals, and issued for same purposes and under the same circumstances as recited in the 45th count of this petition, by each of which coupons the defendant acknowledged itself to owe and promised to pay to bearer twenty-five dollars, at the office of the county treasurer of the said Pike County, on the first day of July, 1876, it being six months' interest on said bonds respectively; and said coupons each and all were duly presented for payment at the office of said county treasurer aforesaid, on the day of the maturity thereof, and payment of each and all of said coupons was then and there refused by the defendant; wherefore plaintiff prays judgment for the total amount of said coupons, to wit, one hundred dollars, with interest thereon from maturity as aforesaid, with costs.

And plaintiff, for a further cause of action in this behalf, says that he is the owner, holder, and bearer for value, of certain other coupons for interest, each for fifty dollars, each of said coupons being numbered on the face thereof, "11," and bearing also the number of bond hereinafter named, which said coupons are now detached from certain other bonds, numbered respectively as follows, to wit, No. 6, 7, 19, 20, 21, 22, 23, 24,
25, 1, 2, 3, 4, 5, all of said bonds being dated November 1, 1871,
95 and payable twenty years after the date thereof, and each of said bonds being for one thousand dollars, and which said bonds were each and all dated, issued, and delivered by the *the* defendant at the time and in the manner mentioned in the first count in this petition, for the same purposes, and to the same company therein named, and for the township of Buffalo, in said county of Pike; the said bonds being a

part of the same issue, containing the same recitals, and issued for same purposes, and under the same circumstances as recited in the 45th count of this petition, by each of which coupons the defendant acknowledged itself to owe and promised to pay to bearer fifty dollars, at the office of the county treasurer of the said Pike County, on the first day of January, 1877, it being six months' interest on said bonds respectively; and said coupons each and all were duly presented for payment at the office of said county treasurer aforesaid on the day of the maturity thereof, and payment of each and all of said coupons was then and there refused by defendant; wherefore plaintiff prays judgment for the total amount of said coupons, to wit, seven hundred dollars, with interest thereon from maturity as aforesaid, with costs.

And plaintiff, for a further cause of action in this behalf, says that he is the owner, holder, and bearer for value of certain other coupons for interest, each for twenty-five dollars, each of said coupons being numbered on the face thereof "11," and bearing also the number of bond hereinafter named, which said coupons are now detached from certain other bonds, each for five hundred dollars, numbered respectively as follows, to wit, 32, 6, 11, 10, 9, 12, 13, 46, 49, 15, 14, 37, 16, 43, 45, 44, 42, 2, 50, 35, 39, 40; said bonds being each payable twenty years after date thereof, which said bonds were each and all dated, issued, and delivered by defendant at the time and in the manner mentioned in the first count of this petition, for the same purposes and to the same
96 company therein named, and for the township of Buffalo, in said county of Pike; the said bonds being a part of the same issue, containing the same recitals, and issued for the same purposes and under the same circumstances as recited in the forty-fifth count of this petition, by each of which said coupons the defendant acknowledged itself indebted to and promised to pay to bearer twenty-five dollars, at the office of the county treasurer of the said county of Pike, on the first day of January, 1877, it being six months' interest on said bonds respectively; and the said coupons each and all were duly presented for payment at the office of said county treasurer on the day of the maturity thereof, and payment of each and all of said coupons was then and there refused by defendant; wherefore plaintiff prays judgment for the total amount of said coupons, to wit, five hundred and fifty dollars, with interest and damages thereon from maturity as aforesaid, with costs.

And plaintiff, for a further cause of action in this behalf, says that he is the owner, holder, and bearer for value of certain other coupons for interest, each for fifty dollars, each of said coupons being numbered on the face thereof 10, and bearing also the number of bond hereinafter named, which said coupons are now detached from certain other bonds, each for one thousand dollars, payable sixteen years after the date thereof, and dated on the first day of November, 1871, which said bonds are numbered respectively as follows, to wit, Nos. 4, 13, 14, 15, 16, 17, 18, 20, 6, 7, and 1, and which said bonds were each and all dated, issued, and delivered by the defendant at the time and in the manner mentioned in the first count in this petition, for the same purposes and to the same company therein named, and for the township of Buffalo, in said county of Pike; the said bonds being a part of the same issue, containing the same recitals and issued for the same purpose and under the same
97 circumstances as recited in the forty-fifth count of this petition; by each of which coupons the defendant acknowledged itself to owe and promised to pay the bearer fifty dollars, at the office of the county treasurer of the said Pike County, on the first day of July, A. D. 1876, it being six months' interest on said bonds respectively; and said cou-

pons each and all were duly presented for payment at the office of said county treasurer aforesaid, on the day of the maturity thereof, and payment of each and all of said coupons was then and there refused by defendant; wherefore plaintiff prays judgment for the total amount of said coupons, to wit, five hundred and fifty dollars, with interest thereon from maturity as aforesaid, with costs.

And plaintiff, for a further cause of action in this behalf, says that he is the owner, holder, and bearer for value of certain other coupons for interest, each for fifty dollars, each of said coupons being numbered 11 on the face thereof, which said coupons are now detached from certain other bonds dated November 1, 1871, and payable sixteen years after the date thereof respectively, with interest thereon at ten per cent. per annum, payable semi-annually at the county treasury of said county on presentation of coupons for interest at said county treasury; said bonds being numbered respectively as follows, to wit, No. 4, 13, 14, 15, 16, 17, 19, 18, 20, 6, 7, and 1, said bonds being each for one thousand dollars, which said bonds were each and all issued and delivered by the defendant at the time and in the manner mentioned in the first count in this petition, for the same purposes and to the same company therein named, and for the township of Buffalo, in said county of Pike, the said bonds being a part of the same issue, containing the same recitals, and issued for the same purpose and under the same circumstances as recited in the forty-fifth count of this petition, by each of which coupons the defendant acknowledged itself to owe and promised to pay the bearer
98 fifty dollars, at the office of the county treasurer of said Pike Co., on the first day of January, A. D. 1877, it being six months' interest on said bonds respectively, and said coupons were each and all duly presented for payment at the office of said county treasurer aforesaid, on the day of the maturity thereof, and payment of each and all of said coupons was then and there refused by the defendant; wherefore plaintiff prays judgment for the total amount of said coupons, to wit, six hundred dollars, and the interest thereon, with costs.

And plaintiff, for a further cause of action in this behalf, says that he is the owner and bearer for value of certain other coupons for interest, each for twenty five dollars, each of said coupons being numbered on the face thereof 10, and bearing also the number of bond hereinafter named, which said coupons are now detached from said certain other bonds, each for five hundred dollars, payable sixteen years after the date thereof, and dated on the first day of November, 1871, which said bonds are numbered respectively as follows, to wit, 42, 43, 44, 45, 47, 48, 2, 4, 35, 36, 37, 38, 39, 32, 33, 27, 28, 29, 30, and which said bonds were each and all dated, issued and delivered by the defendant at the time and in the manner mentioned in the first count in this petition, for the same purposes and to the same company therein named, and for the township of Buffalo, in said county of Pike; the said bonds being a part of the same issue, containing the same recitals, and issued for the same purposes and under the same circumstances as recited in the forty-fifth of this petition, by each of which coupons the defendant acknowledged itself to owe and promised to pay the bearer twenty-five dollars, at the office of the county treasurer of the said Pike County, on the first day of July, 1876, it being six months' interest on said bonds respectively; and said coupons were each and all duly presented for payment at the office of said county treasurer aforesaid on the day of maturity thereof,
99 and payment of each and all of said coupons was then and there refused by defendant; wherefore plaintiff prays judgment for

the total amount of said coupons, to wit, four hundred and seventy-five dollars, with interest thereon from maturity as aforesaid, with costs.

And plaintiff, for a further cause of action in this behalf, says that he is the owner, holder, and bearer for value of certain other coupons for interest, each for twenty-five dollars, each of said coupons being numbered on the face thereof "11," and bearing also the number of bond hereinafter named, which said coupons are now detached from said certain other bonds, each bond for five hundred dollars, payable sixteen years after the date thereof, and dated on the first day of November, 1871; which said bonds are numbered respectively as follows, to wit, Nos. 42, 43, 44, 45, 47, 48, 1, 2, 4, 27, 28, 29, 30, and which said bonds were each and all dated, issued, and delivered by the defendant at the time and in the manner mentioned in the first count in this petition, for the same purposes, and to the same company therein named, and for the township of Buffalo, in said county of Pike; the said bonds being a part of the same issue, containing the same recitals and issued for same purposes and under the same circumstances as recited in the forty-fifth count of this petition; by each of which said coupons the defendant acknowledged itself to owe and promised to pay the bearer twenty-five dollars, at the office of the county treasurer in the said Pike County, on the first day of January, 1877, it being six months' interest on said bonds respectively; and said coupons were each and all duly presented for payment at the office of said county treasurer aforesaid on the day of the maturity thereof, and payment of each and all of said coupons was then and there refused by defendant; wherefore plaintiff prays judgment for the total amount of said coupons, to wit, three hundred and twenty-five 100 dollars, with interest thereon from maturity as aforesaid, with costs.

HENDERSON & SHIELDS,
Att'ys for Pl'ff.

And afterwards, on said 9th day of February, 1877, at said adjourned term of said court, the defendant filed its demurrer to the plaintiff's petition, which demurrer is as follows, to wit:

Demurrer to amended petition.

In the circuit court of the U. S. for eastern dist. of Missouri.

ELISHA FOOTE, PL'FF,
vs.
THE COUNTY OF PIKE, DEF'D'T.

The defendant, by its attornies, comes and demurs to the petition of plaintiff, and for causes of demurrer assign' the following, to wit:

1st. Said petition does not state facts sufficient to constitute a cause of action.

2d. Said petition is in other respects deficient and insufficient.

FAGG & BIGGS,
Att'ys for Def'd't.

And afterwards, on said 9th day of February, 1877, at said adjourned day of said court, the following proceedings were had in said cause, to wit:

Demurrer sustained.

ELISHA FOOTE, PLAINTIFF,
vs.
THE COUNTY OF PIKE, IN THE STATE MISSOURI, DEFENDANT.

Now come the said parties, by their attorneys, the plaintiff by Messrs. Henderson & Shields, and the defendant by Messrs. Fagg & Biggs, and, by leave of court, the plaintiff filed amended petition, and defendant, by its attorneys, files demurrer to said amended petition; and thereupon the said demurrer is submitted to the court, and the court having
101 examined the questions of law arising upon said demurrer, and being fully advised in the premises, is of opinion that the law upon said demurrer is in favor of the defendant, and it is therefore ordered that said demurrer be and the same is hereby sustained.

Judgment.

And the said plaintiff declining to further plead herein, but declaring he will abide by his said petition, it is by the court ordered and adjudged that the said plaintiff, Elisha Foote, take nothing by his writ herein; that the said defendant, the County of Pike, in the State of Missouri, go hence without day, and have and recover against the plaintiff its costs in this behalf expended, and have thereof execution.

And it is further ordered that the following certificate of division of opinion be entered of record, to wit:

Certificate of division.

UNITED STATES OF AMERICA,
Eastern District of Missouri, set:

In the circuit court of the United States in and for said district.

At a term of said court, begun and held at Saint Louis, on Monday, the eighteenth day of September, A. D. eighteen hundred and seventy-six—present, honorable John F. Dillon, circuit judge, and honorable Samuel Treat, district judge—in the case of

ELISHA FOOTE, PLAINTIFF,
vs.
THE COUNTY OF PIKE, IN THE STATE OF MISSOURI, DEFENDANT.

A demurrer to the plaintiff's amended petition was sustained, and plaintiff electing to abide by said demurrer, a judgment was entered for the defendant. In the decision upon said demurrer, and the judgment thereupon had, the judges were opposed in opinion on the following questions:

1st. Whether the petition sets forth a legal cause of action against the defendant.

102 2d. Whether the demurrer to the petition ought to be sustained.

3rd. Whether the defendant had authority, under the constitution and laws of the State of Missouri, to subscribe to the capital stock of the

Clarksville & Western Railroad Company, at the time said subscriptions were made, although two-thirds of the qualified voters of the respective townships named did, at a special election, duly called and held therefor, actually vote in favor of said subscriptions.

4th. Whether, the plaintiff being a bona fide holder for value, the defendant is not estopped by the recital in the bonds from denying that they were lawfully issued in pursuance of a vote of more than two-thirds of the qualified voters of the respective townships, in full compliance with the constitution of the State, and consequently are valid obligations of the county, under the decisions of the supreme court of the State.

5th. Whether the defendant is not estopped from disputing the validity of said obligations, not only from the recitals therein contained, but from the fact that taxes have been duly collected for the payment of the semi-annual interest due thereon, as represented by coupons therefor, and payments made of said coupons during several successive years, and taxes have been caused to be collected for payment of the coupons sued on; said bonds and coupons being negotiable in form, and passing upon the money market from hand to hand accordingly, in full reliance for their validity upon the decisions of the supreme court of the State of Missouri; and also from the further fact that defendant received certificates of stock for said subscriptions, and has voted on said stock at repeated elections of said railway company. All of which is hereby stated under the direction of said judges, and by them certified.

103 (Signed) JOHN F. DILLON.
SAMUEL TREAT.

And afterwards, in vacation of said court, and on the 5th day of March, 1877, the following further proceedings were had in said cause, to wit:

ELISHA FOOTE, PLAINTIFF,
vs.
THE COUNTY OF PIKE, DEFENDANT.

Now comes the plaintiff, by his attorneys, and presents to the honorable Samuel Treat, one of the judges of this court, a writ of error to remove this cause to the Supreme Court of the United States, and a citation, citing and admonishing the said defendant to be and appear at a Supreme Court of the United States to be holden on the second Monday of October next, and thereupon said writ of error is allowed, and said citation signed by his honor, Judge Treat; and the said plaintiff also presents the bond required by law upon the allowance of a writ of error, which bond is approved and ordered to be filed as part of the record herein. The said bond, so approved and filed as aforesaid, is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, Elisha Foote as principal, and John B. Henderson as surety, are held and firmly bound unto the County of Pike, in the State of Missouri, in the full and just sum of five hundred dollars, to be paid to the said County of Pike, in the State of Missouri, or its assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this fifth

day of March, in the year of our Lord one thousand eight hundred and seventy-seven.

104 Whereas lately, at the September term, A. D. 1876, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between Elisha Foote, plaintiff, and The County of Pike, in the State of Missouri, defendant, judgment was rendered against the said plaintiff, and the said plaintiff having obtained a *a* writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said County of Pike, in the State of Missouri, citing and admonishing it to be and appear at a Supreme Court of the United , to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such, that if the said Elisha Foote, the said plaintiff, shall prosecute said writ to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

E. FOOTE, [SEAL.]
P'r J. B. HENDERSON.
J. B. HENDERSON. [SEAL.]

Approved by—

SAMUEL TREAT, *Judge.*

105 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true and complete transcript of the record and proceedings in case No. 854, of Elisha Foote, plaintiff, against The County of Pike, in the State of Missouri, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this 7th day of March, in the year of our Lord eighteen hundred and seventy-seven.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY, *Deputy.*

(Indorsement on cover:) No. 134. Elisha Foote, plaintiff in error, vs. The County of Pike, in the State of Missouri. E. Missouri C. C. U. S. Filed 16th April, 1877.

CONSTITUTIONAL VALIDITY OF THE "TOWNSHIP AID ACT," OF MARCH 23d, 1868.

*No.*_____

—IN THE—

Supreme Court of the United States.

ELISHA FOOTE,
Plaintiff in Error,
vs.
PIKE COUNTY,
Defendant in Error.
} OCTOBER TERM, 1877.

ERROR TO THE

Circuit Court of the United States,

—FOR THE—

EASTERN DISTRICT OF MISSOURI.

BRIEF AND ARGUMENT

—OF—

O. GUITAR,

Counsel for Plaintiff in Error.

Jno. McKittrick & Co., Print., St. Louis, Mo.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1877.

STATEMENT OF THE CASE.

This is a suit to recover the amount of certain "interest coupons" attached to bonds issued by the county court of Pike county, in the state of Missouri, for and in behalf of "Calumet township," in said county, in payment of the subscription of said township to the capital stock of the "Clarksville and Western Railroad Company," in said state, said bonds having been issued under and by virtue of an act entitled "An act to facilitate the construction of railroads in Missouri," approved March 23, 1868, and known as the "Township Aid Act."

To the petition in the case there was a general demurrer, bringing directly before the court the validity of said act and the bonds issued under it.

The demurrer being sustained, and judgment rendered for defendant, plaintiff brings the case here by writ of error.

For a more particular statement of the facts we refer to the record, and for convenient reference, insert here constitutional provision, and the act in question.

CONSTITUTION MO., 1865, ART. 11.

SEC. 14. The General Assembly shall not authorize any county, city or town to become a stockholder in or to loan its credit to any company, association or corporation, unless *two-thirds of the qualified voters of such county*, city or town, at a regular or special election to be held therein shall assent thereto." *Wagner's Statutes, Ed.* 1872, *p.* 62.

THE TOWNSHIP AID ACT.

"SEC. 1. Whenever twenty-five persons, tax-payers and residents in any municipal township for election purposes in any county in this state, shall petition the county court of such county, setting forth their desire as a township to subscribe to the capital stock of any railroad company in this state, building or proposing to build a railroad into, through or near such township, and stating the amount of such subscription, and the terms and conditions on which they desire it made, it shall be the duty of the county court, as soon as may be thereafter, to order an election to be held in such township to determine if such subscription shall be made; which election shall be conducted, etc., etc.; and if it shall appear from the returns of such election that not less than two-thirds of the qualified voters of such township, *voting at such election*, are in favor of such subscription, it shall be the duty of the county court to make such subscription in behalf of such township, according to the terms and conditions thereof, and if such conditions provide for the issue of bonds in payment of such subscription, the county court shall issue such bonds in the name of the county, with coupons, etc.

"SEC. 2. In order to meet the payments on account of the subscription to the stock, according to its terms, or to pay the interest and principal on any bond which may be issued on account of such subscription, the county court shall, from time to time, levy and cause to be collected, in the same manner as county taxes, a special tax, which shall be levied on all the real estate lying within the town-ship, making the subscription in accordance with the valuation then last made by the county assessor for county purposes.

"SEC. 3. The county treasurer shall be authorized and required to receive and collect of the sheriff of the county, the income from the tax provided in the previous section, and to apply the same to the payment of the stock subscription according to its terms, or to the payments of interest and principal on the bonds, should any be issued in payment of such subscription; he shall pay all interest on such bonds, out of any money in the treasury collected for this purpose, by the tax so levied, as the same becomes due, and also the bonds as they mature, which shall be canceled by the county court, and this service shall be considered a part of his duty as county treasurer.

"SEC. 4. Persons paying taxes to pay the stock subscription, made in accordance with the provisions of this act, or the bonds issued in payment of such subscription, shall receive from the collector a certificate, setting forth, in a definite manner, the facts, and such certificates, in sums of one hundred dollars, shall be convertible into the stock of the railroad company receiving the subscription, and the county court shall hold the stock subscribed in behalf of any township in trust for such tax-payers to be transferred as they become entitled to it; and all persons residing in said township, or owning property subject to taxation therein, if they shall have in good faith subscribed to the capital stock of the railroad company receiving the subscription of such township, and paid assessments on the same, as they have been made by the company, shall, to the extent of such subscription, receive credit on their tax, levied in such township, to pay such railroad subscription.

"SEC. 5. In all cases hereafter, where a railroad or branch railroad in this state shall be built, in whole or in part, by subscriptions to its stock, by counties, cities or townships, the proceeds of all state and county taxes, levied upon such railroad company or branch so built, or the property thereof, shall be paid into the treasury of the counties where collected, and the county treasurers shall apportion the same, according to their several subscriptions, to such counties, cities or townships, so subscribing

stock, until the whole amount of such subscription is refunded to them; and such sums so apportioned shall be paid over to the county or city treasurer, and applied to the payment of the interest and principal of the bonds issued by such county or city on account of their subscription of stock, as aforesaid, if they are outstanding, and if not, it shall by them be placed to the credit of the school fund in such county, city or township.

"SEC. 6. This act shall take effect and be in force from and after its passage."

Approved March 23, 1868. *Wagner's Stat. p.* 313, *sec.* 41; *Laws of Mo.*, 1868, *p.*92.

ARGUMENT AND AUTHORITIES.

If we are not mistaken in the view we have taken of this case, "the constitutional validity of the Township Aid Act of 1868, as an "original question" is not involved, except incidentally, in the inquiry here. Whether that statute is "intrinsically constitutional and valid," or not, is a question we think this court will not find it necessary to decide.

"The sound and true rule is, that if the contract when made, was valid by the laws of the State as then expounded by all departments of the Government, and administration in its courts of justice, its validity and obligation can not be impaired by any subsequent action of legislation, or decisions of its courts altering the construction of the law."

To show that the action of the State Government, in all its departments, and the decisions of its courts have been throughout, uniform, consistent and harmonious in support of the "constitutional validity" of the act in question, we will be permitted to advert briefly to the history of "Township Bonds" in the State of Missouri.

The Legislative power, in the absence of any constitutional inhibition, to authorize counties, cities and towns, to take stock in railroads, and to issue bonds in payment, was authoritatively settled in 1856, in The city of St. Louis *vs.* Alexander et al, (23 Mo., 483); and, that, in strict consonance with the law as held at that time in seven of the other states, and since in all where it has been passed upon, with two or three "notorious exceptions," and as expounded by this court from 1858 to the present hour.

That it was not competent for the Legislature, under the power so recognized, to authorize the people of a township, to do that which it could empower the people of a

county, city or town to do, is in our judgment, "a legal absurdity." There could be no "inherent sovereignty" or "political virtue" in the people of one of such subdivisions of territory, which was not to be found in either of the others.

The power to erect three hundred people occupying a "town site" covering a single square mile, into a corporation, clothed with "full corporate functions," committing their exercise to the hands of five persons, "of necessity" implies, and includes the power, to erect five thousand people, occupying a territory of one hundred square miles into a "quasi corporation" with limited functions, and to delegate their exercise to three persons. Such was the law as universally understood. Such the generally received construction of the decision referred to, and such the legislative interpretation given it, as shown by two acts passed at its Sessions of 1859–60, authorizing "strips of territory" without "political designations" or "corporate functions" to take stock in railroads, and to issue bonds in payment, making the county courts agents, to carry out the objects contemplated by said acts. (Sess. Acts 1859–60, pp. 405, 443.)

A similar act was passed by the succeeding legislature, (composed of a different body of men,) in 1861, authorizing both "fragments of territory" and "townships" to subscribe. (Sess. Acts 1860–61, p. 455.) The validity of this latter act, was directly passed upon and sustained, in The State ex rel *vs.* Saline county, (48 Mo. 391.)

Up to this period, and until the adoption of the new constitution in 1865, the legislative authority thus recognized, and acted upon, was unrestricted by any limitation whatever. The framers of that instrument, with a full knowledge of the adjudication and legislation under it, referred to, engrafted into the new organic law the limitation contained in section 14, article 11, of that instrument.

As townships are integral portions of a county, "and the counties to a certain extent control and act for them," and as in previous legislation authorizing subscriptions by "strips of territory," and by "townships," the county courts of the counties in which they were located, were made their agents, it may be just to presume, as this court has done in the "Harshman case," that under the desig

nation of counties, townships were intended to be included. This construction is doubtless right, and for the purposes of this argument we yield our assent to it.

Immediately after, and following close in the wake of this "constitutional limitation," on December 19, 1865, the legislature passed an act authorizing the city of St. Joseph to issue its bonds, provided the proposition should first be submitted to "a vote of the qualified voters of said city, and that in such case it should require two-thirds of such qualified voters to sanction the same."

An election was had under the act, and whilst it appeared that more than "two-thirds of those voting" had sanctioned the issue of the bonds, it was insisted that those assenting did not constitute "two-thirds of the qualified voters of the city;" and that the vote cast did not authorize the issue of the bonds, which the mayor refused to issue.

With the avowed and sole object of testing the question, whether the assent of "two-thirds of those voting" satisfied the requirements of the act, a proceeding was instituted to compel the mayor, by mandamus, to issue the bonds; and the Supreme Court of the state, at its February term, 1866, compelled him so to do, declaring: "We think it was sufficient that two-thirds of all the qualified voters who voted at the special election authorized for the express purpose of determining that question, on public notice duly given, voted in favor of the proposition. This was the mode provided by law for ascertaining the sense of the qualified voters of the city on that question. There would appear to be no other practicable way in which the matter could be determined." (*Bassett vs. The Mayor*, 37 *Mo.*, 270.)

Here we have a clear, authoritative interpretation, of the "identical language of the constitution, '*two-thirds of the qualified voters*' of such city," found in a contemporaneous statute, used in regard to the same subject matter, and for a like purpose. Had the court been called upon to construe the same terms, found in precisely the same connection in the constitution, its conclusion and judgment must of necessity, have been the same; as no amount of legal astuteness can suggest a reason why it should have been otherwise. And this conclusion was neither new or

singular, but fully sustained by the highest authority, in this country, and in England.

Following close upon the heels of this case, we have that of *The State vs. Bender* (38 *Mo.*, 450), decided at the October term, 1866.

The same question is again presented, and the doctrines and authority of the former case, are expressly approved and affirmed, as appears from the following extract from the opinion of the court in this case:

"In the case of Bassett vs Mayor of St. Joseph, when an act of the General Assembly, provided that the mayor and council, should cause all propositions for creating a debt, by borrowing money to be submitted, to a vote of the qualified voters of said city, and that in all such cases it should require two-thirds of the qualified voters to sanction the same, and it appeared that two-thirds of all the voters voting, had voted in favor of the proposition, that was held to be sufficient."

"We think the case made here comes within the reasoning, and principles of that decision, namely, that an election of this kind, authorized for the purpose of determining that question on public notice duly given, was the mode contemplated by the legislature, as well as by the law, for ascertaining the sense of the legal voters upon the question submitted, and that there could not well be any other practicable way, in which such a matter could be determined." The coincidence is worthy of remark, that the language here employed is identical in substance, and almost in terms, with that used by the court in the case of Melvin et al. *vs.* Lisenby et al., recently decided by the Supreme Court of Illinois. Not reported, but to be found in No. 1, Vol. 5, *Central Law Journal.*

We have here a clear, emphatic, and uniform judicial exposition and interpretation of the "legal import and meaning" of the phrase used in the constitution, "two-thirds of the qualified voters of such county, city or town," and that emanating from the court of "last resort" in the state. The "import and meaning" thus given, these terms have become a part of "the law of the state;" and its departments and citizens, when employing them in regard to the same subject matter, are presumed to do so with strict reference to their "adjudged legal signification."

Such had been its history, and such the status of this question in Missouri, when in 1868 the General Assembly was called upon for further legislation, encouraging the construction of railroads in the state. Experience had proven their value, returning prosperity, and the influx of emigration demonstrated the necessity, of greater facilities of travel, and transportation.

The power to authorize counties, cities, and towns, to take stock in railroads, and issue bonds in payment, had been fully recognized and established, not only in this state, but throughout the country. The power to confer the same authority on townships had never been questioned, and no reason could be divined why the citizens of a "township" should be debarred the excercise of rights, enjoyed by the citizens of a town, occupying a fraction of its territory.

Besides its predecessors; two different legislative bodies, had exercised the power. Their acts had received the executive sanction, had passed into laws, had been acted upon by railroad companies; the people, and the county courts interested, without doubt, or question, as to their validity from any quarter.

With this universal recognition of its power, the legislature without question or dissent, assumed its exercise under the "limitations of the constitution." A reference to that instrument disclosed, that in order to become a stockholder in a railroad company, it was necessary that "two-thirds of the qualified voters of such county, city or town," desiring to do so, should first signify their assent at a general, or special election.

Invoking the implication indulged by this court, in the "Harshman case," the legislature concluded that townships were "within the restriction of the constitutional provision," and that the authority given townships to subscribe must be subject to the same limitations as those imposed on counties, cities and towns. The intent, scope, and meaning of that "limitation" was not an "original question." It had been submitted to judicial analysis and determination at the hands of the highest tribunal in the commonwealth, as a co-ordinate department of its government, the legislature was bound to accept that determination as conclusive, and to conform its action accordingly.

In "Bassett vs. the Mayor," and "The State vs. Bender," it had been definitely and authoritatively settled that the language of the constitution "two-thirds of the qualified voters of such county, city or town," when employed in defining the plurality required at an election held therein to "determine some question of public policy," meant neither more, or less, than "two-thirds of those voting." Accepting this "formula" as embodying the "legal essence" and "adjudged import" of the constitutional limitation, it was incorporated verbatim in the "Township Aid Act of March 23d, 1868." Entertaining a proper appreciation of its own prerogatives, and a due respect for the authority of the judiciary, the legislature could not have done otherwise.

The act passed, received the executive sanction, was promulgated, and on the 18th day of May, 1869, its aid (as far as we are advised) was for the first time invoked, and out of this early, if not the first subscription made under it, grew the case, *which we shall insist with the utmost confidence, is final and conclusive, as to its "constitutional validity.* We refer to the case of *The State ex rel. vs. Linn County Court* (44 *Mo.*, 504), decided by the Supreme Court at its October term, 1869.

This was a direct proceeding on behalf of the railroad company asking a "peremtory mandamus" against the County Court of Linn County, as the agent of Benton Township, in said county, to compel the issue and delivery of twenty thousand dollars of bonds, voted and subscribed, by said township, under said act.

In order to a critical, and perfect understanding of the points presented, and decided, we can not do better than quote at length, the salient portions of the opinion in the case.

"The relator asks this court to grant a peremptory writ of *mandamus*, against the respondent, and states substantially, that on the eighteenth day of May, 1869, at a term of the county court in and for the county of Linn, in the state of Missouri, a petition signed by twenty-five (and more) persons, tax-payers, and residents in the municipal township of Benton, in said county, setting forth their desire as a township, to subscribe twenty thousand dollars to the capital stock of the North Missouri Central Railroad

Company, which road was proposed to be constructed through said township. The petition stated the terms, and conditions, on which the petitioners desire the subscription should be made. It is further alleged, that on the eighteenth day of May, 1869, the county court made, and caused to be entered on the record of its proceedings, an order for an election as prayed for in the petition, which order is set out at length; that in the pursuance of said order an election was duly held, conducted as prescribed by law, and that more than two-thirds of the qualified voters of the township, voting at the election, voted in favor of the subscription; that at an adjourned term of the court, held on the fifth day of July, 1869, the court made an order of record, making the subscription in behalf of said Benton township, according to the terms and conditions as set forth in the petition for the election, and the order of the court calling the same; that afterwards at the August adjourned term of said court, held on the sixth day of September, 1869, the North Missouri Central Railroad Company requested the court to issue, and deliver to said company, the bonds required under the terms and conditions of said subscription; but the court refused, and still refuses, to deliver the bonds, for the alleged reason, only, that the act under which the subscription was made, was unconstitutional and void."

The facts here recited, present in "systematic array" every step contemplated by the act, as necessary under its provisions to authorize the issue of bonds, and especially and clearly the fact, "that the authority to make the subscription, and issue the bonds, was predicated upon "*the assent only of two-thirds of the qualified voters of the township voting at the election.*"

But the court refused to deliver the bonds. Why? Not for "divers and sundry reasons," but "*for the alleged reason only*," (says the court,) "*that the act under which the subscription was made was unconstitutional and void*," and because, as the court reiterates, "*the law under which they acted is violative of the State constitution and should, therefore, be regarded as a nullity.*"

With this recitation of the facts, and these distinct, and repeated enunciations of "the proposition" the court was called upon to consider, and decide, we might content

ourselves, but that it has been gravely intimated, that the "constitutional validity" of the "township aid act" is not passed upon in this case.

Let us see further, the court next proceeds in direct terms to refer to the act, and to recount seriatim every provision and section of the act, except the fifth which has no pertinence to the issue—not omitting the *supposed repugnant provision*, "and if it shall appear from the returns of such election, that not less than two-thirds of the qualified voters of such township, '*voting at such election*,' are in favor of such subscription, it shall be the duty of the county court to make such subscription in behalf of such township." Has the court discovered the difference in the language here used, and that employed in the constitutional restriction? We quote further:

"It is now contended that the act is unconstitutional because the bonds which it is sought to compel respondent to issue under the provisions of the act, would be an indebtedness of the county, and not of the township, and that it is therefore in direct antagonism with section 4, article 11, of the state constitution, which declares:

"The general assembly shall not authorize any county, city or town to become a stockholder in, or loan its credit to any company, association, or corporation, unless two-thirds of the qualified voters of such county, city or town, at a regular or special election, to be held therein, shall assent thereto."

Here the limitation of the constitution, is brought in direct juxtaposition with that of the act; is measured by the "organic standard," and if there could remain the "possibility of a doubt" that the difference in language was in the "mind and eye" of the court, and of the learned judge, who delivered the opinion, when we discover further on, that he adopts the language of the constitution as his own, and reflect that he and the court whose opinions he is now inditing had three years before in *Bassett vs. the Mayor* (affirmed in the *State vs. Bender*,) expounded and adjudged the "legal import and signification" of the identical language used in the constitution, "two-thirds of the qualified voters of such city"—and consider yet further, that the only question presented, the only question considered, and the only question decided,

in that case, was the "meaning and import" of said language, and that too when used in regard to the same subject matter, and in like connection, as when employed in the constitution, that doubt must vanish.

We assume therefore that the limitation of the act of 1868, as contrasted with that of the constitution, was definitely and clearly presented, and fully understood and considered by the court; whether passed upon or not, we will answer presently.

It has been said, that the legislative power to authorize townships to take stock in railroads, and make bonds, is not directly and distinctly recognized in the decision under consideration; that having no "corporate organization" they could act neither by themselves nor through the agency of the counties.

Let the decision answer. "As to the first ground, that the township is not a corporation, nor even a '*quasi* corporation,' and has no authority to make the bonds, and that consequently they would be the bonds of Linn county, I do not think the objection is insuperable.

"The township is a legal subdivision of the county—is an organization for certain municipal purposes—but has no power of itself to make independent contracts, or to become bound in its separate capacity. The law has not invested it with that power. It forms an integral part of the county, and the county, to a certain extent, controls and acts for it. In some of the states townships act independently, through trustees, and are capable of making valid and binding contracts; but our law has not given them that authority. I know of nothing, however, to prevent it, should the legislature see fit to do so. * * * *

"The bonds are not therefore in any sense county bonds. The subscriptions are essentially township subscriptions, and the bonds are, to all intents and purposes, township bonds; and the county courts, and the counties named, are merely made use of as agencies to effectuate and carry out the object. The law is now well settled in the United States, that the legislature having control of the subordinate municipal organizations, and the power to enlarge or abridge their powers at pleasure, may make them the instruments in carrying out works of public improvement; and may authorize them to make the subscription and to

levy taxes, and issue the bonds to meet the assessments thereon. Such is now the universal current of decisions, and the question has not been open to dispute in this state since the case of *St. Louis vs. Alexander*."

What is intended to be included in the sweeping phrase here used, "Subordinate municipal organizations?" Of course "every organization for municipal purposes" in the state; of which says the court in the language before quoted, the "township" is one. "The township is a legal subdivision of the county—is an organization for certain municipal purposes," thus holding that the power recognized in the case mentioned, extended as well to "towns" and "townships" as to counties and cities; to be exercised directly, or through the intervention of legally constituted agencies, as the legislature should decide.

This power the court declares, "The new constitution has not abridged. It only requires a different mode of procedure, and that two-thirds of the qualified voters shall assent thereto, before any subscription shall be authorized to be made," which the court construes to mean as shown, "two-thirds of those voting."

But why continue this analysis farther, and where the necessity of it at all, in order to determine what is decided in the "Linn County case."

The court was called upon to compel the issue and delivery of bonds, under a subscription made in pursuance of the provisions of the "Township Aid Act," of March 23d, 1868, authorized by a vote of *two-thirds of the qualified voters of the township, voting at the election*, the issue and delivery of which, was resisted for the "*alleged reason only*," that the act "*is unconstitutional and void*," being "*in direct antagonism with Section* 14, *Article* 11, *of the State Constitution*."

What does the court decide under the "facts," and "law" of the case? Are we left in doubt? "The county court having made this subscription, the company is entitled to the bonds." The force and effect of this decision can never be diminished, or destroyed by any system of sophistical refinement, which counsel may invent. It may be trampled under foot, but can never be reasoned away.

Here upon the field of last resort, after a sharp and

determined conflict, at the point of the "judicial bayonet," the county court of Linn county is compelled to issue and deliver twenty thousand dollars of bonds, on behalf of Benton township, in said county, which, as shown by the auditor's report, have long since been negotiated, and are now outstanding in the hands of innocent holders.

Here we have beyond all question, and cavil, a direct, clear and emphatic decision, "recognizing and establishing" the validity of those bonds, and the constitutionality of the law under which they were made, emanating from the highest court in the State, and that in strict accord, and harmony, with the previous determinations of all departments of the State government.

This court is now called upon to declare, that law unconstitutional and void, and of necessity, thebonds referred to, and all others issued under its authority, invalid and worthless. We shall see whether this can be done under "the law of this court.

In view of that law, as heretofore expounded, it would seem a work of supererogation to undertake to adduce state cases, affirming, the authority of that we have just reviewed.

"The sound and true rule is, that if the contract when made was valid by the laws of the state, as then expounded by all departments of the government, and administered in its courts of justice, its valididty and obligation cannot be impaired by any subsequent action of legislation, or decisions of its courts altering the construction of the law. The same principle applies where there is a change of judicial decisions as to the constitutional power of the Legislature to enact the law."

So it becomes a matter of utter indifference, what the state courts may have done after the decision in the "Linn county case," and the issue of the bonds in question; except as it may throw light upon, or affirm the authority of that case, or tend to harmonize the views of all the members of this court, in showing that the "latest settled adjudications" are in consonance, with all that has gone before.

An examination of the several decisions of the Supreme Court of the State, following that in the "Linn county case," involving in one aspect or another the validity of

the "Township Aid Act," and of subscriptions, and bonds made under it, extending down to a period as late as February, 1875, including the last made before the hearing of this cause, will show, that in all the efforts made in the State courts to defeat these bonds, (except in two of the cases cited,) no member of the bar has had the hardihood to question the constitutional validity of the act, or the conclusive authority of the "Linn county case," and that the court has not in a solitary instance, intimated a doubt as to either; but onthe contrary has in every case directly, or indirectly recognized, the validity of the act, and of subscriptions, and bonds made under it, or under the provisions of like acts passed anterior to it.

State ex rel vs. Saline County, 45 *Mo.* 242.
State to case of Neal vs. Saline County Court. 48 *Mo.* 390.
Ranney vs. Boeder, 50 *Mo. Con.*
Rubey vs. Shain, 54 *Mo.* 207.
State vs. Landuton, 54 *Mo.* 203.
State vs. Cunningham, 51 *Mo.* 479.
State vs. County Court Bates County, 57 *Mo.* 70.
State vs Clarkson, 59 *Mo.* 149.

In The State *vs.* Cunningham, the validity of bonds issued under the "township aid act" is expressly recognized, and the "Linn county case" quoted with approval. The case of the State *vs.* the County Court of Bates county, decided July, 1874, was a proceeding to compel a subscription, and the issue of bonds under the authority of the "township aid act." The counsel for the township to defeat the subscription, and issue of bonds, relied upon two grounds.

"1. The Act of March 23, 1868, does not form any part of the railroad charter, and was never accepted by the company as such, *and the township had no legal right, or authority to become a stockholder in the road.*

"II. The railroad has been completed, and hence the proceeds of the bonds cannot be appropriated in said township as the road progresses."

It was claimed on the other hand for the railroad company, that the subscription should be made on behalf of the township, for the reason as stated, viz:

I. "If it appears from the returns of the election, that

not less than *two-thirds of the qualified voters of a township voting at such election*, are in favor of the subscription, it shall be the duty of the county court to make the subscription. *Wagner Stat.*, 313, §51," (which is section 1, Township Aid Act, 1868).

It will be observed that "the authority of the township to become a stockholder in the road" is expressly controverted, and put in issue, and its power to do so when authorized by "*two-thirds of the qualified voters of the township voting at the election*," under the act, is expressly affirmed.

The court in a unanimous opinion recognizes the validity of the act, and of the authority conferred by the vote of "two-thirds of those voting" on the county court to make the subscription; and refused a mandamus for the sole reason, that the subscription was "not demanded or made until after the road was completed through, the township." Mark the language:

"Certainly the railroad company could have no legal interest in the proposed subscription to their capital stock until it was actually made and accepted by the company. The result of the election invested the company with no legal interest. It only authorized the county court to make the subscription, which the railroad company might, or might not accept at their option. But although the county court was invested with authority to make the subscription, it was not made, nor was it demanded until after the road had been constructed and in full operation through the township. The authority to make the subscription ceased as soon as the road was completed through the township. It was not contemplated by the act of the legislature of 1868, that townships should be allowed to take stock in roads already built."

It would be difficult to indite a clearer or more emphatic recognition of the validity of the "township aid act," and of the authority of the "Linn county case," than is found here; but if it be possible, we think it has been done in a still later case. We refer to the case of *The State vs. Clarkson*, before cited, and invoke the critical attention of the court, not only to the argument, and opinion, but to the circumstances, and coincidences surrounding it.

The decision in this case was rendered in February, 1875,

only a few months before that in the "Harshman case," and not published until after the hearing in that case. The case was decided by the same bench, with a single exception, sitting when the case last referred to was decided. The case originated in the same county with the "Linn county case." It involved the right of a township to subscribe stock to a railroad company, and the ownership of funds collected to pay interest on bonds issued in pursuance thereof.

The same counsel represents the defendant here, that opposed the subscription and issue of bonds in the former case, invoking in substance the same objections, viz: that a municipal township could not legally hold or own property, "because it had no separate existence."

The counsel for the state affirmed the right of a township to subscribe stock to a railroad company, under and by virtue of the "township aid act." The same learned judge who delivered the opinion in the "Linn county case" delivers the opinion here, expressly recognizing and affirming the doctrines and authority of that case, as shown by the following extract:

"It is true, that the township had no power to make independent contracts and be bound in a separate capacity; but it was nevertheless a legal subdivision of the county—an organization for certain municipal purposes. The law under which this indebtedness accrued, for which the money was paid, to satisfy the township interest on its subscription to stock, was not a county liability. The name of the county was made use of as a medium; but the township was exclusively required to provide for the payment of the interest and principal. The subscriptions were essentially township subscriptions, and the bonds issued were township bonds, to all intents and purposes, and the county courts were merely made use of as agencies to effectuate and carry out the objects of the law. (*State vs. Linn County Court, 44 Mo., 504.*")

Here we might stop; but that we may conclude this array of authority with a fitting climax, and round up the question logically, and naturally, we will be permitted to refer to one additional fact connected with its history—a fact which concentrates at once within itself, and reflects back, all the results, legislative, executive, administrative and ju-

dicial, affecting the construction and "constitutional validity" of the "Township Aid act." A convention of the sovereign people of the state, in the persons of their chosen delegates, assembled at its capital in August, 1875, and there framed and promulgated a new constitution, which in the following October was duly ratified. Recognizing and representing the change of sentiment, touching the policy, and longer necessity, of municipal aid to railroads—the state already being threaded with roads, and groaning under a heavy burden of accumulated indebtedness—the Convention determined not to abridge farther, but to take away altogether the power to grant such aid. Not of course from "municipal organizations" which did not have such power under the constitution, and laws of the state then existing, but from such as did have it; and to do so, the convention adopted Sec. 47, Art IV., as follows:

"Sec. 47. The general assembly shall have no power to authorize any county, city, town or township, or other political corporation, or subdivision of the state, now existing, or that may hereafter be established, to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company." (See also Sec. 6, Art. ix, and Sec. 12, Art. x, Const. Mo., 1875.)

Certainly the inhibition against "townships" would have been idle, and superfluous, unless they had the power to become stockholders in such corporations." But further to show that the language contained in the limitation of the old constitution, "two-thirds of the qualified voters" had acquired in the minds of the people, the bar, and the bench, all here represented, *a fixed and determinate meaning;* that its signification under the construction of all departments of the state government had become "formulated;" it will be observed in every instance, where in the new constitution a vote is contemplated, or prescribed, including the proposition for the removal of county seats, the qualification is framed in the language of the "township aid act," whether a majority or plurality—it is always "of those voting" or an equivalent expression.

Is this the mere work of chance, and without significance? or does it not show that the question we are con-

sidering had been authoritatively settled, and passed into the juridical history of the state?

It is "mildly hinted," however, that the authority of the "Linn county case," and of all that has preceded, and followed it, is shaken by the decision of the State court, in the case of *The State vs. Sutterfield*, (54 *Mo.* 391). According to the views of a majority of this court, although it expressly overruled all that had gone before, it could make no difference in the result of the case at bar, but regarding it as we do, an authority directly in support of our position, affirming the principle of construction, established in *Bassett vs. the Mayor*, and *The State vs. Bender*, and recognized and acted upon, in the "Linn county case," and in all that has come after it, we will be indulged in a brief reference to it.

The court was called upon to construe Sec. 30, Art. iv, of the constitution of 1865, as follows:

"The general assembly shall have no power, to remove the county seat of any county, unless two-thirds of the qualified voters of the county, at a general election, shall vote in favor of such removal."

It will be remarked that the restriction here is in regard to a different "subject matter," couched in different language, and requiring a different test—that is, that "*two-thirds of the qualified voters shall vote in favor of such removal.*" It is not sufficient that two-thirds of the qualified voters "*shall assent to the removal*," but they "*shall vote in favor of such removal*," thus cutting the case off, from that "established rule of construction" recognized both in England and in this country.

Rex vs. Foxcroft, 2 Burr, 1017.
St. Joseph Township vs. Rogers, 16 Wall, 644.
People vs. Garner, 47 Ills., 246.
State vs. Woodford, 2 Cent. L. J., 818.
Ruger vs. Beaufort, 70 N. C. 319.
Donovon vs. Green, 57 Ills., 67.
Melvin et al, vs. Lisenby et al,— Ills., —.

That the court, and the learned judge who delivered the opinion, so regarded it, is evident from the following language:

"There is no doubt that in general where an election is held to determine the choice of a candidate, or the deter-

mination of some question of public policy, the plurality required by the law, whether it be a bare majority or two-thirds, or three-fourths, is determined by the result of the vote cast, without regard to the number of voters declining to vote, and this is upon the ground that the failure to vote is assumed, or may be presumed, an acquiescence in whatever result may be produced by the action of those who feel sufficient interest in the election to go to the polls and vote; and for the further reason that, in most cases, there is no mode by which the number of absentees can be ascertained. The decision of Lord Mansfield, in Rex vs. Foxcroft, is therefore rightly followed in many cases in this country where it might be properly applied."

Note the reason why the rule here so emphatically recognized, and clearly expounded could not be applied to the case then in hand.

"Our Constitution in regard to the proposed removal of county seats, it seems to me, hardly admits of two constructions. It prohibits the legislature from removing them unless two-thirds of the qualified voters *shall at a general election vote for the removal.* The words do not imply an acquiescence, or a negative sanction, or a negative assent, inferred from absence, *but a positive vote in the affirmative.*"

Mark the distinction, "*an acquiescence*" *or* "*negative assent*" *or* "*negative sanction*" is all that is contemplated and intended by Sec. 14, Art. xi, of the Constitution. It is not left to implication; it follows literally and inevitably, from the language itself, "unless two-thirds of the qualified voters of such county, city or town, at a regular or special election, to be held therein, *shall assent thereto,*" not by *an affirmative vote,* but by an "acquiescence" or "negative assent" or "negative sanction;" in other words, by not voting.

To show more clearly, that it was not the purpose of the court to disturb its former decisions, we quote further:

"We are referred, however, to two decisions of this court, *Bassett vs. the Mayor* and *The State vs. Bender.* which are supposed to maintain views conflicting with this opinion. We should hesitate to interfere with previous adjudications of this court, if on the faith of such decisions property had been acquired, or money invested," not only

"hesitate," but refuse "without hesitation" to do so, as that court has repeatedly decided, in consonance and harmony with the first principles of justice, and with the recognized doctrines, and practice, of every enlightened court upon the earth, and as rebutting conclusively "the supposition of a conflict," we extract two additional sentences.

"But a reference to those cases will show that neither of them arose, on the construction of a provision of the constitution, or on the subject matter now under consideration. * * * * * * * *

"In none of these cases, however, was there any examination of, or construction given to the precise language of the constitutional provision now under consideration."

We add, *Bassett vs. the Mayor, was in regard to the "same subject matter," and was a construction of the "precise language," of the constitutional provision now under consideration; and The State vs. Bender was in direct affirmance of that case.*

When we state, in concluding our notice of the "Sutterfield case," that the cases of The State vs. Clarkson, and The State vs. the County Court of Bates county, were afterwards decided by the same court, the judge delivering the opinion in the former case, sitting and concurring in the two last, we think we have redeemed our assumption that the "Sutterfield case" is with us, and not against us, conceding as it does the correctness and authority, of that "principle of construction" which as an "original question" lay at the foundation of this case, but which having been authoritatively settled by previous adjudications, and acted upon in the "Linn County case," and affirmed by those coming after, is no longer open to dispute.

From this summary, but correct and authentic history of the "township bond question" in Missouri, we deduce the following conclusions:

The power of the legislature to authorize "subordinate municipalities" to take stock in railroads, was directly and authoritatively settled by the Supreme Court of the State in 1856.

That this power extended to "fractions of territory" and to "townships," was expressly recognized, assumed and acted upon by the legislature in 1859-'60-'61—that

these acts were valid, and in harmony with the constitution of the State, was conceded on all hands, and upon the faith of their validity, the people, the county courts, and the railroad companies acted; elections were ordered and held, subscriptions made, bonds issued and negotiated, railroads built, and finally the validity of the acts themselves were tested in the court of last resort in the state, and sustained.

In 1868, in accordance with the views thus entertained by the people, and all departments of the state government, the "township aid act" was passed, received the Executive sanction, and became a law.

The language of the constitutional restriction had in the meantime been submitted to "judicial analysis and construction:" it had been decided that "two-thirds of the qualified voters, meant two-thirds of those voting." Accepting the construction thus authoritatively made, the limitation in the language of the "adjudged formula" was engrafted into the act.

With public confidence thus fortified and assured, new roads were projected, the people demanded, to to be heard, and their assent was given as provided by law and on the faith of it subscriptions were made. But the then recent efforts in Iowa and Wisconsin to repudiate like bonds on the score of "slumbering technicalities" had shaken public confidence, and excited the suspicions of capital. It being the interest alike of the townships, and the companies; that these bonds (designed to be negotiated,) should bring in the markets as near as possible their par value, and recognizing the fact that to effect this, all doubts as to their validity must be removed, they determined to submit the question to what they deemed, and what had been decided by this court to be, "a final and conclusive arbitrament."

In pursuance of the act, and under the authority of "*two-thirds of the qualified voters of the township voting at the election*," a subscription was made by the County Court of Linn county, on behalf of Benton township in said county. On demand made the Court refused to issue the bonds, and the railroad company invoked the compulsory power of the court of last resort in the State, to compel their issue, which was resisted for the "*reason only, that*

the act under which the subscription was made was unconstitutional and void."

After a careful and critical review, of the act in all its parts, contrasting it with the constitutional restriction, the Court, all the judges concurring, decided the act "constitutional and valid"—that a majority of "two-thirds of those voting" was sufficient to authorize the subscription, that the company was entitled to the bonds, which as before stated, the court was compelled to issue under the compulsory process of the law.

On the authority of this decision, and that which preceded it, three millions of township bonds, have been issued, and passed into the hands of innocent holders. Other cases, involving in one form or another, the validity of those bonds, and of the act under which they were made, have been brought, considered, and decided by the same high court, and in every instance with the same result, the last case decided as late as 1875, citing and expressly affirming the "Linn county case."

Thus strengthened and confirmed, confidence in the integrity of these securities, because universal, and their value fixed, and unvarying. The money arising from their sale had gone to build the roads to which they had been voted. The stock acquired by the townships was regularly represented, the taxes on the bonds for state and county purposes annually set apart, and apportioned to the townships, and the interest on the bonds uniformly and promptly paid. They became favorite objects of investment with all classes of society. A large portion of them have passed into the annuity fund of the widow, the patrimony of the orphan, and the endowment of the college and university. Bond-maker, and bond-holder, reposed alike in the confi dent belief, that all questions touching the validity of these bonds, (unless in exceptional cases, and for exceptional reasons), had been forever put to rest; and that no "*hidden infirmity*" could ever be brought to light, (even though it existed,) to impair their obligation, or destroy their value.

This confidence was not built alone upon the adjudications of the state courts, consistent and harmonious, as they had been in support of the bonds. Experience had shown that tribunals composed of men dependent for "bread and meat" upon the good will of "bond-makers, and

who are often committed upon pending questions before being allowed to go on the bench, are not the most certain and steadfast arbiters of justice. They may "stand by the right, though the heavens fall"—but falter when calamities nearer home are threatened. The "sheet anchor" of this confidence was found in "the law of this court," as enunciated and expounded in the "great case of Gelpcke vs. City of Dubuque," (1 Wall, 175,) and as recognized, and adhered to in subsequent cases.

"The sound and true rule is, that if a contract when made was valid by the laws of the state as then expounded by all departments of the government and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent action of its legislature, or decision of its courts, altering the construction of the law. The same principle applies where there is a change of judicial decision, as to the constitutional power of the legislature to enact the law. To the rule thus enlarged we adhere. It is the law of this court. It rests upon the plainest principle of justice. To hold otherwise would be as unjust, as to hold that rights acquired under a statute, may be lost by its repeal." We add, in the language of the court: "The rule embraces this case."

Again, in Havemeyer vs. Iowa County, (3 Wall, 294.)

"We can look only to the condition of things which subsisted when they were sold. That brings them within the rule laid down by this court in Gelpcke vs. City of Dubuque. In that case it was held, that if the contract when made, was valid by the constitution and laws of the state, as then expounded by the highest authorities, whose duty it was to administer them, no subsequent action by the legislature, or judiciary, can impair its obligation. This rule was established after the most careful consideration. We think it rests upon a solid foundation, and we feel no disposition to depart from it."

And again in Thomson vs. Lee county (3 Wall, 327.)

"The courts of Iowa having, when the bonds were issued, construed their constitution and laws so as to give them force and vitality, can not by a subsequent and contrary construction, destroy them."

Finally, in The town of South Ottawa vs. Perkins, decided on rehearing at the October Term, 1876.

"And this court has always held that the laws of the states are to receive their authoritative construction from the state courts, except where the Federal Constitution and laws are concerned: and the state constitutions, in like manner, are to be construed as the state courts construe them."

The rule, as thus expounded, proceeds upon the hypothesis that the State courts, by a "subsequent and contrary construction," have undertaken to destroy the bonds in question, which we insist they have not done; but if the "Sutterfield case" can be so regarded, then every condition of the rule is fulfilled, if not, our case meets the views of this entire court.

We add, by way of parenthesis, that cases have been advanced on the docket of the Supreme court of the State, at the instance, as we are advised of parties opposed to the payment of these bonds, and with a view, no doubt, of obtaining a decision unfriendly to them, and that for the purpose of influencing the result in this, and other cases pending here. Under "the law of this court," if rendered, such a decision, could cut no figure here.

This court will "never immolate truth, justice, and the law, because a State tribunal has erected the altar, and decreed the sacrifice." We hazard nothing, however, in saying, that the supreme court of Missouri can never be used for such a purpose, or be induced to trample in the dust, the solemn adjudications rendered at its own bar, "on the faith of which millions of dollars have been invested." Such a course would be in direct antagonism to the uniform and unvarying doctrines, and practice of that court. We quote from a very late case, decided in 1873, involving the same question presented here:

"It is too late now to question the power of municipal corporations to subscribe to railroad enterprises. It might have been better if the courts had decided the question otherwise at the beginning, but this court since the case of The City of St. Louis vs. Alexander, has acquiesced in the general and prevalent doctrine, millions of dollars have been invested on the faith of such decisions; and it would be a bold and hazardous experiment to undertake a new investigation of the subject."

Although most elaborately and exhaustively argued, and

the "Harshman case" appealed to as conclusive against the "constitutional validity" of the "township aid act," the Court refused to render a decision in the cases until the questions involved should be passed upon by this Court; its action indicating most clearly, the view taken of its own decisions, and of the scope and intention of that rendered in the "Harshman case."

So also of the action of the Missouri Legislature at its recent session. Instead of eliminating "township bonds" from the list of taxable property, which should have been done if the view taken of the "Harshman case," by our learned opponents be correct, the Legislature placed them in the same category with State, county and other bonds, thus recognizing, as it had done in all previous legislation, the validity of the "township aid act," and of bonds issued under it, notwithstanding the decision referred to, and the industrious propagation of the opinion, that it is conclusive against the validity of the bonds.

(See Sess. Acts 1877, 377, §3.)

We stand now "face to face" with the only decision to be found in the whole history of these bonds, where an intimation has been made against their validity, on the ground, that the act under which they were issued is repugnant to the constitution of the state, in force at the time of its passage.

The "Harshman case" does not decide the act unconstitutional, but that the constitutional restriction extends, by implication, to townships as well as to counties, cities and towns." Holding as an "original proposition" that there is a "broad difference" between the language of the restriction, and the requirements of the act, and that an "election not conforming to the requirements of the constitution would be invalid, and confer no authority, to make a subscription," clearly indicating, that in the opinion of the court, an election conforming to the constitution would authorize a subscription.

The question here considered and decided, is as to the identity in "literal import" of certain language used in the act, and certain other language found in the constitution. A mere question of construction—a simple matter of opinion, about which courts and judges may, well differ as they have always done and will do to the end of time;

and whether decided one way or another as an "original question" would have been a matter of little or no consequence, as those interested could, and would have conformed their action accordingly. No injury could possibly have resulted; the act could have been amended, the road abandoned, the stock withheld, and in no event could the bonds have come into the hands of innocent holders. But these alternatives are now cut off, and only ruin, and injustice, can follow any attempt to re-open the questions so long regarded, as settled, and buried.

In the argument the learned counsel for respondent did not seriously question the power of the Legislature to authorize subscriptions by townships, but insisted that such subscriptions, if authorized, were within the constitutional restriction, and that the assent of two-thirds of the qualified voters of the township" was an indispensable prerequisite. Whether the terms here used had ever been subjected to "judicial analysis," or had acquired a "fixed legal import and signification" at the hands of the State courts, or elsewhere, were propositions not mooted or considered.

Hence we conclude that in contrasting the language of the constitution, with that of the "township aid act," the learned judge who delivered the opinion, treated it as a mere abstract proposition, and without reference to previous adjudications upon the subject. As an original question he may be right, but in the light of adjudged cases prior and subsequent, including the case of Melvin et al. vs. Lisenby et al., before referred to, we think otherwise.

But, however mistaken we may be, as to the scope, and intent of the decision in the "Harshman case," we are certainly correct in assuming, that the questions whether the "constitutional restriction" had received a judicial construction at the hands of the court of last resort in the State, and whether the "constitutional validity" of the "township aid act" had been authoritatively settled, and passed upon by that court, are propositions which were not presented, argued, considered, or decided, and which this court is now, for the first time, called upon to consider and decide.

We assume as a proposition of fact, that these questions have been settled by the court of primary jurisdiction, (as

we have labored to show,) and that the ultimate issue presented here, is not whether three millions of bonds, shall, or shall not be paid.

Nor whether the bond-makers, shall be called upon to repudiate an honest debt, the payment of which they had never sought to avoid, (only in exceptional instances, of fraud or hardship) until the decision in question, and who, notwithstanding, in many instances have reaffirmed the validity and binding obligation of their bonds, and to-day stand ready, and willing to pay. Though of the gravest consequence to those interested, their payment is a question in which the "great public" have no direct interest, and its decision no abiding significance.

The wronged and ruined, would soon pass away, and the case be forgotten. But this is not the paramount issue, this court is now called upon to decide. The question we present involves "a principle" which will live as long as the states sustain their present relations to the Federal Government—as there shall be a state, and federal judiciary, and as our constitution and form of government shall last.

"If the contract when made was valid by the laws of the State as then expounded by all departments of the government, and administered in its courts of justice," can its validity, and obligation, be impaired by any subsequent action of its legislature, or decision of the State, or federal courts?

This is no new question. It is coeval with the formation of our government. Its decision by this court as expounded in the "great case" already refered to, gave value, and negotiability to our public securities, at home, and abroad. Confidence to-day in the integrity of our entire bonded indebtedness, rests upon the faith of that case, and those which have followed it.

The disposition to repudiate, rather than pay, an onerous debt, especially of a public character, is no new phase in human nature, and becomes a source of national peril, when it has acquired the boldness to utter within hearing of "Freedom's Temple," the sentiment.

"To the people of the north and west, notice is given that all the toil to which they are subjected, that bond-holders and monopolists may fatten secure, is repaid, by no security for their rights, and that a shrinkage of values is now in

order. If there is law for fraud, there is reason for violence, and to that we make our last appeal."

How prompt the response: Communism flaunts her bloody banner; the arteries of the nation are cut; the wheels of commerce locked; blood, rapine, and devastation, sweep unchecked over the land; the nation stands paralyzed, and aghast at the spectacle. Cities, counties, commonwealths, helpless, appeal for national aid. Millions of property, and hundreds of lives, are swept away in the space of a few hours. How terrible the admonition, and what the lesson it teaches.

Augmented by the exceptional degeneracy bred by the war, which we may deprecate, but cannot ignore, the "spirit of repudiation" but for the bulwark presented in its way, by this august tribunal, would overleap all other barriers, legal and moral, and with one stroke of its pen, dipped in blood, if need be, sweep away every vestige of our indebtedness, public and private, Federal, state, and municipal. *National dishonor, is the prelude to national decay.*

ODON GUITAR,

Counsel for plaintiff in error.

Supreme Court of the U. S.

OCTOBER TERM, 1879.

ELISHA FOOTE,
Plaintiff in error.
vs.
THE COUNTY OF PIKE,
IN THE STATE OF MISSOURI,
Defendant-in-error.
} *No. 134.*

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

SMEDLEY DARLINGTON,
Plaintiff-in-error.
vs.
THE COUNTY OF JACKSON,
IN THE STATE OF MISSOURI,
Defendant-in-error.
} *No.* 150.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF AND ARGUMENT OF PLAINTIFFS-IN-ERROR.

HENDERSON & SHIELDS,
Attorneys for Plaintiffs-in-Error.

Supreme Court of the U. S.

OCTOBER TERM, 1879.

ELISHA FOOTE,
Plaintiff in error.
vs.
THE COUNTY OF PIKE IN THE STATE OF MISSOURI,
Defendant in error.
No. 134.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

SMEDLEY DARLINGTON,
Plaintiff in error.
vs.
THE COUNTY OF JACKSON,
Defendant in error.
No. 150.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT OF FACTS.

Both of these suits are brought to collect interest coupons on what are known, in Missouri, as Township bonds.

In the case first named, No. 134, the bonds were issued by Pike County, Missouri, for the benefit of Calumet Township in said County, payable to the Clarksville & Western Railroad Company or bearer, in the usual commercial form The bond recites, that it "is issued pursuant to an order of the County Court, of said County of Pike, and by authority of an act of the General Assembly of the State of Missouri,entitled, 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the votes of said Township." The petition avers, that the said vote was taken at a special election duly held for that purpose. It is further averred that the bonds sued on were issued, negotiated and delivered to the Railroad Company, for value, and in payment of a stock subscription made to the capital stock of said Railroad Company, and that the County received stock certificates therefor and repeatedly voted thereon for Directors of the Company, and in the management and control of its affairs.

It is also averred that the County Court of the County levied and collected taxes from the taxpayers of the Township for the several years extending from 1871 to 1876 inclusive, and the coupons maturing on said bonds were paid from the date of the bonds up to, and inclusive of the 1st day of January, 1876.

The Plaintiff claims to be an innocent holder, for value, of the coupons sued on, and prays judgment therefor.

This suit was made returnable to the September term of the Court in 1876, and during the term, *to-wit*: on February 9th, 1877, the Defendant filed a general demurrer to the petition, and the demurrer was sustained, and judgment entered for the Defendant, on the authority of the case of Harshman vs. Bates County, decided by this Court in May, 1876. (See 92 U. S. R. p. 569.) In the decision upon the

demurrer, and the judgment had thereon, the Judges, Hon. John F. Dillon and Hon. Samuel Treat, were opposed in opinion, and a division is by them certified as follows:

1st. Whether the petition sets forth a legal cause of action?

2d. Whether the demurrer ought to be sustained?

3d. Whether the Defendant had authority to subscribe the stock, although two-thirds of the qualified voters of the Township had actually voted therefor?

4th. Whether the Plaintiff, being a *bona-fide* holder, for value, the Defendant is not estopped by the recitals in the bonds, from denying their validity, under the Constitution and laws of Missouri?

6th. Whether the Defendant is not estopped by the collection of taxes, the payment of coupons, the acceptance of stock certificates and voting at elections, from disputing the validity of said obligations, inasmuch as the bonds and coupons are negotiable in form, and have passed upon the money market from hand to hand, in full reliance that they were valid under the decisions of the Supreme Court of Missouri?

The Railroad Company receiving these bonds is now known as the St. Louis, Keokuk & Northwestern. The road extends from Keokuk, Iowa, to Dardenne, Missouri, where it intersects the St. Louis, Kansas City & Northern, and is one of the best roads in Missouri.

In the second case, No. 150, the suit is by the Plaintiff in error against Jackson County, Missouri, brought on matured coupons detached from Township bonds, issued and delivered by said County, in behalf of Kaw Township therein, the same Township in which Kansas City is situated, payable to the Wyandotte, Kansas City & Northwestern Railroad Company or bearer. The bonds were issued in payment of stock subscribed by said County, in behalf

of Kaw Township, to said Railroad Company, pursuant to an order of the County Court and according to the provisions of the said Act "to facilitate the construction of railroads in the State of Missouri," approved March 23, 1868.

The bonds are dated May 20, 1873; and having therefore been issued after the passage of what is known as the Registration Act of Missouri, they were "previous to negotiation" presented to the State Auditor for registration, and by him registered and endorsed as required by law. In his certificate of registration, endorsed on each bond, under the seal of the State, it is certified, "that all the conditions of the laws of this State (Missouri,) have been complied with, in the issue of the within bond; that the conditions of the contract, under which the same was ordered to be issued, have also been complied with, and that this bond (and each of said bonds) has been duly registered in this office, under the provisions of 'an act to provide for the registration of bonds issued by Counties, Cities and incorporated towns, and to limit the issue thereof' approved March 30, 1872, and the amendment to said act, approved March 17, 1873."

The petition avers that the bonds and coupons were delivered to the Railr ad Company for value, in payment of the stock subscription duly made for said Township; that the County, for said Township, accepted, and yet holds, a stock certificate in the Railroad Company for said bonds; that taxes were annually levied to pay the coupons thereon, and the people of the Township voluntarily paid the same for three years after their negotiation and delivery; that the Railroad Company has fully completed its road, through the entire length of Kaw Township, through Jackson County, and from Wyandotte to Lexington, Mo., its full length as contemplated, and the same is now being successfully operated; and that the County has annually

collected and still collects the taxes on the Railroad Company, for the benefit of said Township. It is also averred that the issue of the bonds was authorized by two-thirds of the qualified voters of the Township.

This suit was brought to the April term, 1877, of the Circuit Court in the Western District of Missouri. A general demurrer was interposed by Defendant, to the effect, that Township bonds were invalid, according to the decision of this Court in the Harshman case, decided in May, 1876. The demurrer was sustained and judgment given for the Defendant; and the case is here upon a writ of error.

HISTORY OF LEGISLATION AND JUDICIAL DECISION IN MISSOURI, CHRONOLOGICALLY STATED.

The Constitution of Missouri, adopted in 1820, contained the following provision:

"ART. VII. Internal improvement shall forever be encouraged by the government of this State, and it shall be the duty of the General Assembly, as soon as may be to make provision by law for ascertaining the most proper objects of improvement, in relation both to roads and navigable waters; and it shall also be their duty to provide by law, for a systematic and economical application of the funds appropriated to those objects."

The first railroad charter "to incorporate the Louisiana & Columbia Railroad Company" was adopted on January 27, 1837. It contained the following provisions:

"SEC. 16. It shall be lawful for the County Courts of the respective Counties on said road to subscribe for such portions of the stock of said Company, as they may deem proper, and upon such terms as they may agree with the Company."

"SEC. 17. When any stock shall have been subscribed for by the County, the Justices shall have a right to vote on behalf of the County at any election, and they may at any time, require of the Directors information concerning the affairs of the company."

The foregoing provisions substantially were made applicable to all subsequent railroad charters in the State, up to February 16, 1847, when the Hannibal & St. Joseph Railroad Company was incorporated. Its 4th Section adopted all the provisions of the act of 1837.

The Pacific Railroad Company, chartered on March 12, 1849; The North Missouri, chartered on March 3, 1851; The Iron Mountain, on March 3, 1851; The Platte County on February 24, 1853, contained substantially similar provisions. The Counties and towns through which these roads passed generally subscribed stock, and their bonds have been paid or renewed.

Prior to 1853, all Railroad Companies in the State were incorporated under special acts of the Legislature.

On February 24, 1853, a general act "to authorize the formation of Railroad associations" was adopted. (*Laws Mo. 1853, p. 121.*) It contained the following provisions:

"SEC. 29. It shall be lawful for the County Court of any County, and the City Council of any City, to subscribe to the capital stock of any Railroad Company, duly organized under this or any other act, in this State; and the County Court or City Council subscribing or proposing to subscribe to such capital stock, may for information, cause an election to be held, to ascertain the sense of the tax-payers of such County or such City, as to such subscription, and as to whether the same shall be paid by issues of County or City bonds, as the case may be, or by taxation."

This general railroad law passed into the revision of 1855, and constitutes section 30, of said revision.

Rev. Stat. of Mo., 1855, vol. 1, p. 427.

On January 14, 1860, this section was so amended as to read: "shall for information," instead of "may for information," thereby making it the duty of the County Court before subscribing, to submit the question to a majority vote of the tax-payers.

Session Acts, 1859-60, *p.* 88.

On March 23, 1861, this section was further amended, so as to require a submission of the question to a vote of qualified electors; "and if a majority of all the resident voters of said County or City, who are qualified to vote for County and State officers, and who shall vote at such election, shall cast their votes for subscribing said stock, then the County Court or City Council shall subscribe." etc.

The second section of this act provided that the County Court shall not subscribe the stock "unless the same has been voted for by a majority of the resident voters."

Sessiou Acts, 1860–1, *p.* 60

Thus stood the law until the change of the State Constitution, which took effect on July 4, 1865. It provides as follows:

"ART. 11, SEC. 14. The General Assembly shall not authorize any County, City or Town, to become a stockholder in, or to loan its credit, to any company, association or corporation unless two-thirds of the qualified voters of such County, City or Town, at a regular or special election to be held therein, shall assent thereto."

At the first session of the Legislature assembled after the adoption of the Constitution of 1865, the general railroad corporation act of the State was changed to read as follows, *to-wit*:

"SEC. 17. It shall be lawful for the County Court of any County, the City Council of any City, or the trustees of any incorporated town, to take stock for such County, City or town, or loan the credit thereof, to any Railroad Company,

duly organized under this, or any other law of the State ; *provided*, that two-thirds of the qualified voters of such County, City or town, at a regular or special election to be held therein, shall assent to such subscription."

Vol. 1, *Wagner Stat.* 1872, *p.* 305.

The next section authorizes the issue of bonds to pay the subscription when made.

Without encumbering this brief with unnecessary authorities, the assertion is made, that the Legislative, Executive and judicial authorities of the State for twelve years concurred in the construction of this provision. It was conceded by all, that the only change made by the new Constitution, on the subject of railroad subscriptions, from the law of 1861, was the requirement of a two-thirds vote instead of a bare majority of the voters of the municipality interested. The universal practice, from 1865 to 1875, when yet another Constitution was adopted, was to count the votes cast at the election held for the purpose, and if two-thirds of those *voting* at the election voted for the subscription, the subscription was made and the bonds issued.

The first act passed by the General Assembly after the adoption of the Constitution of 1865, involving an interpretation of its provisions in regard to stock subscriptions to public corporations, is "An Act amending the charter of St. Joseph," approved, December 19, 1865 ; *Laws of Mo.* 1865–6, *p.* 269,

The Act is as follows :

"So much of section 2, of the act entitled 'an act to amend the charter of the City of St. Joseph,' approved February 11, 1857, as provided, that 'propositions to subscribe stock in any railroad terminating at or near the City of St. Joseph, shall be submitted to a vote of the taxable inhabitants of said City' be, and the same is hereby repeal-

ed, and the Mayor and Council of said City, shall hereafter cause all such propositions to subscribe stock in any Railroad Company, or to the capital stock of any other incorporated Company, or to create a debt by borrowing money for any purpose whatever, to be submitted to a vote of the qualified voters of said City, and in all such cases it shall require two-thirds of such qualified voters, to sanction the same."

At the same session, March 12, 1866, (*see page 254 of same book*,) an act was approved, authorizing the town of Clarksville, to subscribe for public improvements, "after having first obtained the consent of the inhabitants, as required by the Constitution of the State."

At the same session the general railroad law was amended as already stated on page 7 of this brief, so as to make it conform strictly to the words of the Constitution.

The City Council of St. Joseph, a few days after the passage of the act of December 19, 1865, ordered an election to be held on January 13, 1866, on a proposition to issue $ 50.000 of bonds under said act. The election resulted in having 336 votes cast for the issue of the bonds, and 58 votes against it. The Mayor, who, under the ordinance, was required to sign the bonds when issued, refused to do so, on the ground that only two-thirds of those voting and not two-thirds of all the qualified voters had assented to the issue. An application for a writ of mandamus, to compel him to sign the bonds was made, and the Supreme Court of Missouri passed upon the question at its February term, 1866. The opinion is unanimous and the language used is as follows:

"The only reason given by the Mayor, for declining to sign the bonds in question, was, that he was in doubt whether the matter was to be determined by two-thirds of all the votes polled at the special election, or by two-thirds of all the voters resident in the City absolutely, whether

voting or not. We think it was sufficient that two-thirds of all the qualified voters who voted at the special election authorized for the express purpose of determining that question, on public notice duly given, voted in favor of the proposition. This was the mode provided by law for ascertaining the sense of the qualified voters of the city upon that question. There would appear to be no other practicable way in which the matter could be determined."

State ex rel. Bassett vs. Mayor of St. Joseph, 37 *Mo.* 270. (1866)

At the following October Term, 1866, the Supreme Court of Missouri passed upon a similar question

The Legislature, by an act approved March 4, 1857, had provided, that the corporate authorities of the different Cities in St. Louis County, might authorize the sale of refreshments (distilled liquors excepted) on the Sabbath, "whenever a majority of the legal voters of the respective Cities in said County, authorize them so to do."

An election was held at which a majority of the votes polled in the City of St. Louis on the question involved, and authorized the sale, but such majority was less than half of the whole vote of the City as indicated at other elections and by the vote on other questions pending at the same election.

The Court said:

"In the case of the *State ex rel. Bassett vs. Mayor of St. Joseph*, 37 *Mo.* 270, when an act of the General Assembly provided that the Mayor and Council of the City should cause all propositions for creating a debt by borrowing money to be submitted 'to a vote of the qualified voters of said City,' and that in all such cases it should require 'two-thirds of the qualified voters to sanction the same,' and, it appeared that two-thirds of all the voters voting had voted in favor of the proposition, that was held to be sufficient. We think the case made here comes within

the reasoning and the principles of that decision, namely, that an election of this kind, authorized for the very purpose of determining that question, on public notice, duly given, was the mode contemplated by the Legislature as well as by the law for ascertaining the sense of the legal voters upon the question submitted, and that there could not well be any other practicable way in which such matter could be determined. And, certainly, in the absence of any evidence to the contrary, it may be presumed that the voters voting at an election so held were all the legal voters of the City; or, that all those who did not see fit to vote (if there were any) acquiesced in the action of those who did vote, and so are to be considered as equally bound and concluded by the result of the election.

State vs. Binder, 38 Mo. 450. (1866.)

On March 5, 1868, the General Assembly passed An Act limiting the creation of indebtedness in the City of St. Joseph in any one year to the amount of revenues collected, unless authorized by a majority vote of the Council and approved by the voters; "and if at such election, two-thirds or more than two-thirds of the qualified voters of said City shall vote in favor of said ordinance, the same shall thereby become valid and binding upon said City of St. Joseph."

Laws of Mo. 1868, *p. 238.*

On March 17, 1868, An Act to amend the Charter of Kansas City was approved, by which the Common Council was authorized to borrow money to pay Railroad subscriptions and for other purposes; "*Provided*, however, that every ordinance for borrowing money, &c., shall have been passed by a vote of three-fourths of all the Aldermen elect, submitted to a vote of the qualified voters and approved by two-thirds of the votes *cast* at any general or special election held in said City before such ordinance shall be in force and effect." (See same book, page 212.)

On the 25th March, 1868, An Act was approved authorizing the City of St. Louis to guarantee the bonds of the Illinois and St. Louis Bridge Company (the bridge being known as the Eads bridge at St. Louis) to the amount of four million dollars. This was a loan of credit and fell subject to the provisions of the Constitution. After providing the mode of calling the election and the period of notice to be given, the Act provides that "the vote at such election shall be by ballot and said ballots shall have either written or printed thereon the words, 'for the bridge company bonds,' or 'against the bridge company bonds.' The votes cast at such election shall be counted and certified on the poll books by the judges and returned to the City Register's office within two days after such election; and within five days thereafter the votes *as certified* shall be examined and added up in the presence of the Mayor of the City, the President of the Common Council and the City Comptroller, or any two of them, and the result certified to the Mayor; and if it shall appear that two-thirds of the qualified voters cast their votes 'for the bridge company's bonds,' then, but not otherwise, the Mayor of the City shall be authorized and it shall be his duty to guarantee the bonds of said bridge in the manner hereinbefore provided."

The 6th Section of this Act provides that in case the Company fails to pay principal or interest of these guaranteed bonds, the entire bridge and all its franchises shall by operation of law become the property of the City, subject only to the Company's mortgage to secure payment of the four million dollars.

Laws 1868, *p.* 182, sections 3 to 6.

On March 23, 1868, the General Assembly passed An Act "to facilitate the construction of railroads in the State of Missouri," (*Session Acts* 1868, *p.* 92,) which provided:

1. That on the petition of twenty-five tax-payers and residents of a municipal township, expressing a wish that the

township take stock in any company building or proposing to build a railroad into, through or near such township, and stating the amount, terms and conditions of such subscription, it became the duty of the County Court to order an election to be held in such township on the proposition; "and if it shall appear from the returns of such election, that not less than two-thirds of the qualified voters of such township voting at such election are in favor of such subscription, it shall be the duty of the County Court to make such subscription in behalf of such township according to the terms and conditions thereof, and if such conditions provide for the issue of bonds in payment of such subscriptions, the County Court shall issue the bonds in the name of the County, with coupons for interest attached," etc.

2. The County Court shall from time to time levy and collect a tax on all the real estate lying within the township, sufficient to pay interest and principal of the bonds.

3. The County Treasurer is required to receive the tax from the collector and apply it to the payment of the interest and principal of the bonds.

4. Persons paying the special tax shall receive from the Collector certificates thereof, and such certificates are convertible into stock of the Company; and the County Court shall hold the stock so subscribed, in trust for the taxpayers, to be transferred to them as they become entitled to it.

5. "In all cases hereafter (March 23, 1868) where a railroad or branch railroad in this State shall be built, in whole or in part, by subscriptions to its stock by Counties, Cities or townships, the proceeds of all State and County taxes levied upon such railroad Company or branch so built, or the property thereof, shall be paid into the treasury of the counties where collected, and the County Treasurers shall apportion the same according to their several subscriptions, to such counties, cities or townships so subscrib-

ing stock, until the whole amount of such subscription is refunded to them; and such sums so appropriated shall be paid over to the county or city treasurer and applied to the payment of the interest and prinipal of the bonds issued by such county or city on account of their subscription of stock as aforesaid, if any are outstanding, and if not, it shall by them be placed to the credit of the school fund in such county, city or township." *(Laws 1868, p. 92.)*

It was under this Act that the coupons in litigation in this case were issued. A short time after the passage of this Act an election was held in Benton Township, in Linn County, Missouri, for the purpose of authorizing a subscription to the North Missouri Central Railroad Company in behalf of said Township. A two-thirds majority of the votes cast at the election were in favor of the subscription and issue of bonds. The County Court refused to make this subscription or issue the bonds. A petition was filed in the Circuit Court of the County, asking for a peremptory writ of mandamus against the County Court to compel it to subscribe to the stock in accordance with the vote, and to issue the bonds.

DECISIONS OF THE SUPREME COURT OF MISSOURI ON TOWNSHIP BONDS.

The aforesaid case was tried and appealed to the Supreme Court of the State of Missouri and decided at the October Term, 1869, as reptored in *44 Mo. 504*. The Counsel for the County Court, in the brief filed, (see page 506) insisted that the Act of March 23, 1868, was unconstitutional because:

1. The bonds which it was sought to compel the respondent (the County Court) to issue would be an indebtedness of the County and not of the Township;

2. The Township had no authority to make the bonds;

3. The Township was not a corporation nor even a *quasi* corporation and that the Act did not make the Township a corporation for any purposes whatever;

4. The bonds were to be issued in the name of the County and not of the Township;

5. The County Court was in no way the agent of the Township;

6. The Act was unconstitutional because it provided that real estate only should be taxed for the payment of bonds issued under it, thus exempting all other species of property;

7. The Legislature could only authorize such subscriptions to be paid out of general taxation, and the assessments required by the Act did not fall under the head of taxation within the meaning of the Constitution.

The following is a statement of the case taken from the the opinion of the Court:—

"The relator asks this Court to grant a peremptory writ of *mandamus*, against the respondent, and states substantiaally, that on the eighteenth day of May, 1869, at a term of the County Court in and for the County of Linn, in the State of Missouri, a petition signed by twenty-five (and more) persons, tax-payers, and residents in the municipal Township of Benton, in said County, setting forth their desire as a Township, to subscribe twenty thousand dollars to the capital stock of the North Missouri Central Railroad Company, which road was proposed to be constructed Through said township. The petition stated the terms and conditions, on which the petitioners desire the subscription should be made. It is further alleged, that on the eighteenth day of May, 1869, the County Court made, and caused to be entered on the record of its proceedings, an order for an election as prayed for in the petition, which order is set out at length; that in pursuance of said order an election was duly held, conducted as prescribed by law,

and that more than two-thirds of the qualified voters of the Township, *voting at the election*, voted in favor of the subscription; that at an adjourned term of the Court held on the 5th day of July, 1869, the Court made an order of record, making the subscription in behalf of the said Benton Township, according to the terms and conditions as set forth in the petition for the election and the order of the Court calling the same; that afterwards, at the August adjourned term of said Court, held on the 6th day of September, 1869, the N. Mo. Central R. R. Co., requested the Court to issue and deliver to said Company the bonds required under the terms and conditions of said subscription; but the Court refused, and still refuses to deliver the bonds, for the alleged reason, only, that the act under which the subscriptions was made was *unconstitutional and void*.." (See page 507.)

The return to the original writ avers "that the County Court ought not to issue and deliver the bonds, because the law under which they acted is violative of the State Constitution, and should therefore be regarded as a nullity." (Pages 507-8)

The Court proceeds to examine the act of March 23, 1868, section by section, (pp. 508 and 509,) and then uses this language: "It is now contended, that the Act is unconstitutional, because the bonds which it is sought to compel respondent to issue, under the provisions of the act, would be an indebtedness of the County and not of the Township, and that it is therefore in direct antagonism with Section 14, Article 11 of the State Constitution, which declares, 'the General Assembly shall not authorize any county, city or town to become a stockholder in, or to loan its credit to, any Company, association or corporation, unless two-thirds of the qualified voters of such County, City or town at a regular or special election to be held therein, shall assent thereto"—P. 509.

It was insisted that a Township was not a municipal corporation, and that such bonds could not be issued; and to this objection the Court says:

"The Township is a legal subdivision of the County—is an organization for certain municipal purposes—but has no power of itself to make independent contracts, or to become bound in its separate capacity. The law has not invested it with that power. It forms an integral part of the County. and the County to a certain extent, controls and acts for it. In some of the States, Townships act independently, through trustees, and are capable of making valid and binding contracts; but our law has not given them that authority. I know of nothing, however, to prevent it, should the Legislature see fit to do so. * * *

"The bonds are not therefore in any sense County bonds. The subscriptions are essentially Township subscriptions, and the bonds are, to all intents and purposes, Township bonds; and the County Courts, and the Counties named, are merely made use of as agencies to effectuate and carry out the object. The law is now well settled in the United States, that the Legislature having control of the subordinate municipal organizations, and the power to enlarge or abridge their powers at pleasure, may make them the instruments in carrying out works of public improvement: and may authorize them to make the subscription and to levy taxes, and issue the bonds to meet the assessments thereon. Such is now the universal current of decisions, and the question has not been open to dispute in this State since the case of *St. Louis vs. Alexander*." (Page 510.)

To the objection of unconstitutionality of the law, because it imposed a tax to pay the bonds only on real estate, while the Constitution declared that "no property, real or personal, shall be exempt from taxation." The Court held that the tax could be levied as a special tax on the ground of benefits to the land, and held "that the section

in the constitution against exempting property from taxation had reference only to ordinary or general taxation," and that the tax provided by the act of 1868 is legal.

After an elaborate and exhaustive opinion involving every question touching the validity of bonds issued under this Act, of 1868, the Court concluded in these words:

"The County Court having made the subscription, the company is entitled to the bonds."

The bonds were issued and passed into the market for full value. 44 Mo. 504. (1869.)

In 1872, the validity of Township bonds issued under this Act was again presented to the judgment of the Supreme Court of Missouri. This was an action of trespass brought by one *Ranney*, a tax-payer, against *Bader*, the Collector of Cape Girardeau County, for the amount of money collected from the tax-payer to pay coupons due on Township bonds. The plaintiff's petition alleged "that the bonds are illegal and void, and were issued without any authority of law.

The petition of citizens asking an election, recited that the Iron Mountain, Cape Girardeau and Bloomfield Railroad Company, was authorized to construct a railroad along a certain line—describing it. It then asked the County Court to order an election, to determine whether the Township of Cape Girardeau, would subscribe thereto $150,000 on the terms stated. The Court, in making the order of election, submitted it, not as a proposition to subscribe to this particular compauy, but as a proposition, "for the purpose of constructing *a* railroad, commencing at the City of Cape Girardeau, running in a south-west direction to some desirable point on the State line." The route named is substantially the one indicated in the charter of said Company, which was referred to in the petition of the tax payers. (Page 601)

The Court in its opinion says:

"It (the order) provided for an election in accordance with the law controlling elections, required the necessary notices, and appointed judges. The election was regularly held, and 376 votes were cast for subscription, and 7 votes against it. The abstract of the vote was certified to the County Court, and thereupon it was ordered that the Court subscribe $150,000 in the name of the County, for and in behalf of the Cape Girardeau Township, to the capital stock of the Company, on the terms heretofore stated, which were set out in full. *The whole proceeding was strictly in pursuance of the statute.*" (See page 601.)

It was objected, that, as no particular railroad Company was designated in the order of the County Court, the proceeding was void for indefiniteness. The Supreme Court, on this point, said: "That is sufficiently certain which can be made certain; and this may be done either by express words, or by words which by reference can be reduced to a certainty." (See Page 602.)

Again: "There is no pretence that there was any other road in existence, or contemplated. The references and intention are unmistakable, and are sufficiently certain." (Page 603.)

The answer sets out the entire proceedings, preceding the issue of the bonds, and states the number of votes, "cast at the election—376 votes for, and 7 against the proposition, and the Court says: "As no other fault is found with the proceeding, and as every step taken seems to have been done in a formal and regular manner, I entertain no doubt about the validity of the subscription. The objections urged, are entirely too refined and technical." The decision is concurred in by all the judges. (See page 603.)

Ranney vs. Baeder, 50 Mo. 600. (1872.)

The question was again presented to the Supreme Court in 1873. The defendant in the case was indicted for steal-

ing a bond issued by Lawrence County for Pierce Township in said County. It was objected that the County could have no property in the bond. The Court overruled the objection, and said: "Although it was in reality a Township bond; that is, the Township was the real debtor in this bond, yet the County could become the owner of the bond, and would be the owner, as trustee, until the bond was delivered to the Railroad Company or to some purchaser thereof."

State vs. *Cunningham*, *51 Mo. 479*, (1873.)

It was presented again in the same year in the case of the *State vs. Sanderson*.

This was an application for injunction against the Collector of Pike County, Missouri, to prohibit him from collecting taxes levied to pay township bonds. It was instituted in the name of the State by the Prosecuting Attorney of the County, as authorized in that State.

It is stated, substantially, in the petition and in the brief of the Circuit Attorney, that the bonds were illegally issued, and are void—that two-thirds of the voters voting at the election, did not vote in favor of making the subscription—and that no power had been conferred on the County Court to issue the bonds, &c. While it is true that the case passed off on the objection of a want of proper parties to the proceeding, the Court used this language: "We may observe that the irregularities set up in regard to the election, would be no defense against the *bona fide* bondholders."

State ex. rel. v. Sanderson, *54 Mo. 203*, (1873.)

The question was indirectly presented again in the same year in the case of *Rubey v. Shain*, *54 Mo. 207*. In this case the validity of the Act of 1868, and of bonds when properly issued under it, is admitted throughout. The Court uses the following language: "On the

18th day of the same month, (December 1868,) a petition was presented to the County Court, under the Act of the 23d of March, 1868, signed by the necessary number of tax-payers of Hudson Township, requesting the Court to order a vote in said township, as to whether the township would take $ 40,000 of stock in said company. In June, 1869, the vote was taken and the requisite majority was obtained."

The next case in order was decided in 1874.

In February, 1869, twenty-five tax-payers of Prairie City Township, in Bates County, submitted to the County Court their petition for an election in said township to test the sense of the voters, as to whether the Township should subscribe $25,000, to be paid in bonds under the act of March 23, 1868. The election was ordered, and one of the conditions prescribed in the order and voted upon, was that "the proceeds of the bonds should be expended in building the road within the Township." The proceeding in this case, is a prayer for *mandamus* to compel the subscription and issue of the bonds in accordance with the vote of the township. The petition alleged a vote of ninety for and three against the proposed subscription, "which," the Court says, "were more than two-thirds of the qualified voters, as alleged in plaintiff's petition."

After the railroad was completed and in full operation through the township, the company applied to the County Court, for the first time, to subscribe the stock thus voted, and it being refused, this proceeding was taken to compel the subscription.

The Supreme Court, in denying the writ, expressly affirms the validity of the act, by admitting the power of the County Court to make it. The following language is used: "But although the County Court *was invested with authority to make the subscription*, it was not made: nor was it demanded until long after the road had

been constructed and in full operation through the township. The authority to make the subscription ceased as soon as the road was completed through the Township."

And again: "In my judgment, the authority for making the subscription had ceased before this application was made."

The road being completed, the Court thought that the proceeds of the bonds could not then be expended in building the road within the Township.

State ex. rel. v. County Court of Bates County, 57 *Mo.* 70.

The next case was decided in 1875 and is as follows:

The defendant was indicted, as Treasurer of Linn County, Missouri, for embezzling funds alleged to be the property of Jefferson Township in said County, the same havind been collected from the tax-payers of said Township and placed in his hands to pay coupons on bonds issued by the County for said Township. The lower Court quashed the count containing the above allegation, on the ground that the "Township was a body that had no authority under the law to own or hold property."

The Supreme Court says in its opinion: "It is true that the Township had no power to make independent contracts, and be bound in a separate capacity, but it was, nevertheless, a legal subdivision of the county—an organization for certain municipal purposes. The law under which the indebtedness accrued, for which the money was paid to satisfy the Township interest on its subscription of stock, was not a County liability. The name of the County was made use of as a medium, but the Township was exclusively required to provide for the payment of the interest and principal. The subscriptions were essentially Township subscriptions, and the bonds issued were Township

bonds, to all intents and purposes, and the County Courts were merely made use of as agencies to effectuate and carry out the object of the law."

"The money, it is alleged, came into the hands of defendant to pay the interest on the Township bonds; it was raised from taxes assessed on Township property, and it was property charged as Township property."

State v. Clarkson, 59 Mo. 149. (1875.)

In the meantime the question of the validity of bonds issued under this act was repeatedly presented to the Circuit Courts of the the U. S. sitting in Missouri, and especially in the case of *Jordan v. Cass County, 3 Dillon R.* 185, and *Harshman v. Bates County, 3 Dillon R.* 150, both decided in 1874.

In the former case, the petition set out the bonds in full and declared that they were issued under the Act of March 23, 1868, and the statement of the case is as follows:

"The County demurs to the petition on the ground that the bonds are not bonds of the County but of Mount Pleasant Township on which alone they are binding; that two-thirds of the qualified voters of the County did not assent to the issue thereof and that the Act of March 23, 1868, under which they purport to have been issued is unconstitutional." Article 11, § 14 of the Constitution of 1865 is quoted in the statement and in the opinion of the Court, and the Act of March 23, 1868 is thoroughly examined, and the question on the demurrer was the same as is now presented to this Court.

Judge Dillon delivered the opinion of the Court, and the following is copied therefrom:

"The act has been held constitutional by the Supreme Court of the State (*State ex. rel. vs. Linn County, 44 Mo. 505.*), and it is our opinion that the Constitution of the State (Article 11, section 14), which prohibits the Legisla-

ture from authorizing any "*County, City or Town*" to subscribe to the stock of any Railroad Company, unless authorized by two-thirds of the qualified voters therein, does not prohibit the Legislature from authorizing *Township* aid to Railways, if two-thirds of the voters of the Township shall sanction the proposition. Whether the Legislature could authorize Township aid to Railways without the assent of two-thirds of the voters therein, need not be determined, for it has not undertaken to do so. The section of the Constitution above mentioned does not in terms limit the Legislative power, except as respects "Counties, Cities and Towns"; but other municipal creations would be within the mischief the Constitution intended to remedy, and hence, it would seem, within its spirit and meaning. Supposing this to be so, however, the only limitation on the Legislature would be that it could not authorize the aid by Township or by the people within them, without the popular sanction which the Constitution requires. It would not be a fair or a legitimate construction of the provisions of the Constitution to hold that it *absolutely* disabled the Legislature as respects municipal creations or civil divisions of the State not therein mentioned.

Treating the Act of 1868 as valid, the next question is: Whether the holder of the bonds issued in accordance with its provisions—that is, by the County Court *in the name of the County* on behalf of the Township, pursuant to a two-thirds vote of the citizens of the Township—can maintain an action thereon, for any purpose, against the County in whose name the bonds are made. * * * We are thus brought to the question whether a holder of bonds issued pursuant to the Act of March 23, 1868, may recover judgment thereon against the County in whose name they are issued, to be enforced, if necessary, not by an execution against the County but by *mandamus* against the County Court to compel it to levy upon the property in the Town-

ship the special tax which the law has enjoined as a duty upon it.

After some hesitation we have reached the conclusion that such an action will lie, and that this view will best carry out the design of the Legislature in the enactment in question. The expressed purpose of the statute was "to facilitate the construction of railroads in the State of Missouri," and to this end it provided for the issue of negotiable bonds, with coupons for interest attached. These were to be negotiated and sold, and, as Townships were not known to the law as corporate bodies, some provision must be made whereby payment could if necessary, be enforced. The Act met the difficulty arising from the non-incorporation of Townships by directing the bonds to be issued in the 'name of the County.' By the legislation of Missouri the County has a corporate or *quasi* corporate capacity, with limited power to contract and sue and be sued. *Wagner's Statutes, 407, 408.* * * *.

Upon the whole, our judgment is that the action is well brought against the County, that the County may make defense, but if the plaintiff shall be found entitled to recover he may have judgment against the County for his debt, damages and costs, to be enforced if necessary, by mandamus against the County Court, or the Judges thereof, to compel them to levy and collect a special tax according to the statute in such case provided, and not otherwise."

In the last case the same learned judge, having quoted the Constitutional provision, says: "And this requirement of a two-thirds vote as a condition of the right of any County, City or Town to take stock is also made in the enactments of the Legislature, passed in pursuance of the above-mentioned provision of the Constitution. (*Wag. Stat. 305, secs.* 17, 18.) And such a precedent vote is also required in the Township Railroad Act of March 23, 1868, under which the vote was taken and the bonds now before

the Court were issued. Accordingly the question was submitted to the voters of Mt. Pleasant Township, on the third day of May, 1870, whether they would subscribe," etc., "and the *requisite two-thirds of those voting at the election* voted therefor."

During this entire period the Legislature of the State was passing acts giving practical construction to these provisions of the Constitution

In 1869 the City of Chillicothe was authorized to borrow money for any purpose of public improvement, provided the ordinance therefor shall have been submitted to a vote of the qualified voters of said City, and "approved by two-thirds of the votes cast at any general or special election held in said City." *Laws of Mo.* 1869, *page 96, section* 18.

At the same session municipal Townships, Cities, Towns and Villages were authorized and empowered to subscribe to corporations for the purpose of building graded, gravelled or macadamized roads. The Act provided that whenever 20 persons, taxpayers and residents of any municipal Township, City, Town or Village shall petition the County Court, setting forth their desire, to subscribe to the capital stock of any graded, gravelled or macadamized road Company, it should be the duty of the County Court to order an election to be held to determine the question, "and if it shall appear, from the returns of such election, that not less than two-thirds of the qualified voters of such townships, towns or villages voting at such election are in favor of such subscription or appropriation, it shall be the duty of the County Court to make such subscription or appropriation in behalf of such towns, townships or villages according to the terms or conditions thereof; and if such conditions provide for the issue of bonds in payment of such subscription, the County Court shall issue such bonds in the name of the County, with coupons for interest attached; but the rate of interest shall not exceed ten per cent.: and the same shall

be delivered to the Secretary of such Company or such other person as the Court shall designate," etc.

It also provides, that the County Court should levy, from time to time, and cause to be collected a special tax in such Township, City. town or village for the purpose of paying the subscription or appropriation, according to its terms. It is made the duty of the County Treasurer to obtain the special tax as levied from the Collector, and apply the same to the payment of the principal and interest of the bonds thus issued.

1 Wagner's Stat. (1872,) 321 a. b.

At the same session, Kansas City was authorized to borrow money for public purposes, provided the ordinance shall have been submitted to the qualified voters thereof and approved by two-thirds of such voters "voting" at any general or special election held in said City.

Laws of Missouri, (1870,) *page 327*, § 5.

At the session of 1872, the City of Lexington was authorized to provide for paying the amount of á railroad stock subscription by the issue of bonds, provided the issue thereof should be "anctioned by two-thirds of the legal voters of said City cast at such election."

Acts of 1872, *page 430*, §17.

At the same session, the town of Carthage was authorized to issue bonds in the same manner, "provided that two-thirds of the qualified voters voting at said election shall assent thereto." *Same Book*, *page 348*, §1.

At the same session, the town of Holden was authorized to issue bonds "for any purposes beneficial for the interest and prosperity of said town," provided that the proposition shall have been first determined upon by a two-thirds majority of all the votes cast at a special election to be called by the Council and held for that purpose.

To show that the Legislature of the State regarded the terms "two-thirds of the qualified voters voting at the election" and "two-thirds of the qualified voters of the municipality" to mean the same thing, reference may be made to the following acts passed during the same sesion of the Legislature:

The City of Oregon was authorized to make a railroad stock subscription, in 1870, "if two-thirds or more than two-thirds of the qualified voters of said City shall vote in favor of such ordinance."

Acts of 1870, page 406, §60.

The City of Booneville was, in 1872, authorized to loan the credit of the City if sanctioned "by the qualified voters of the City in the manner provided by Section 14, Article 11 of the Constitution of the State of Missouri."

Laws of 1872, *page* 303.

The City of Brunswick, at the same session, was authorized to make appropriations of money for public purposes provided "a two-thirds majority of the qualified voters of the City shall consent thereto at an election held for the purpose."

Laws of 1872, page 315.

During the time that these Township bonds were being voted and issued in Missouri, *to-wit*: in December, 1872, this Court passed directly upon the question involved. A Township of Champaign County, Illinois, was authorized to take stock in a Railroad Company provided "a majority of the legal voters of said Township "expressed themselves at the election in favor of the subscription. It was admitted that only a majority of those voting had assented, and the point was expressly made by defendant's Counsel that a majority of all the voters was required. The opinion proceeds as follows:

"Responsive to the first objection, it is insisted by the plaintiff that the Legislature in adopting the phrase 'legal voters of the Township' intended to require only a majority of the legal voters of the Township voting at the election notified and held to ascertain whether the proposition to subscribe to the stock of the Company should be adopted or rejected; and the Court is of the opinion that such is the true meaning of the enactment, as the question would necessarily be determined by a count of ballots. Tested by these considerations it is clear that an election was held within the meaning of the Act of the Legislature, and that a majority of the legal voters of the Township had voted in favor of the subscription, as the proofs show; that a meeting was called and held, and that a majority of the legal voters voting at the meeting voted in favor of the proposition."

St. Joseph Township v. Rogers, 16 *Wall.* 644, (1872.)

Finally in 1875 a Convention was assembled in Missouri for the purpose of framing a new Constitution for the State. The 6th section of article 9 of the Constitution so framed impliedly admits the legality of Township bonds issued under the Act of March 23, 1868, by providing that "no County, Township, City or other municipality shall hereafter become a subscriber to the capital stock of any railroad or other corporation or association, or make any appropriation or donation or loan its credit thereto." No Township bonds had been issued except under the Act of March 23, 1868 and the macadamized road Act of 1870; and the same provisions of law existed for taking the vote of the people under both of said Acts. It is, therefore, clear that up to 1876 all departments of the State government of Missouri recognized and admitted the validity of Township bonds issued under the Act of March 23, 1868.

The first authoritative declaration intimating their invalidity came from this Court in May, 1876.

Harshman vs. Bates County, 97 *U. S.* 569.

In the Spring of 1877, the Supreme Court of Missouri had an opportunity to declare the Township act void but failed to do so. An attempt was made by *mandamus* to compel the issue of Township bonds by the County Court of Davis County, in compliance with a vote of the voters of the Township. The *mandamus* was refused, not because the Act of 1868 is void, but solely on the ground of a failure of the Railroad Company to comply with the conditions prescribed in the vote of the people at the polls.

The Court uses the following language: "The power of the voters of a Township is purely statutory, and exhausts itself when such voters give expression at the polls of their assent to, or dissent from, the proposed subscription. Any subsequent action on their part therefore being unknown to the law, is possessed of no legal validity and can, by no means, absolve the Railroad Company from the conditions which were imposed at the time the vote to subscribe was taken."

This, though not expressly affirming the validity of the Township Act, at least negatively or impliedly re-affirms it, by asserting the binding efficacy of the vote of the qualified voters of a Township, under the statute. The decision was made with the Harshman case before the Court; and the Court was urged to declare the Act invalid, and thus to end the case, which it thus positively refused to do.

This latter opinion was delivered in the spring of 1877, and substantially re-affirms the former cases extending from the Linn County case decided in 1869. See also *State ex rel. Hopkins vs. County Court Cooper County*, 64 *Mo.* 170.

While these opinions were the law of the State, the Townships issued and sold four millions of bonds, and secured thereby not less than one thousand miles of railroad in Missouri.

The next case in the order of time was that of *Cass County vs. Johnson*, decided by this Court at its October Term, 1877, reported in 95 U. S., 360, in which this Court decided that the Township Aid Act was not repugnant to the Constitution of Missouri adopted in 1865, and that bonds issued according to the provisions of that Act are valid, and the collection thereof could be enforced by *mandamus* against the County Court issuing them. The case of Harshman against Bates County, so far as it conflicted with this opinion, was expressly overruled. It was not until the summer of 1878 that the Supreme Court of Missouri undertook to hold the Act of March 23, 1868 void. Bonds issued under said Act were held to be invalid in two cases decided at the same term.

See State ex rel. Woodson vs. Brassfield, 67 Mo. 331;

Webb vs. Lafayette County, 67 Mo. 353.

Both cases were decided by a divided Court. Four Judges sat in the first case, and they were equally divided. In the second case, all the Judges (five in number) were on the bench and the opinion was reached by three Judges against the opinions of two. The following is the dissenting opinion of Napton, Justice, in which Hough, Justice, concurred:

"Whatever might have been the construction of the article in the Constitution of 1865, in regard to Township subscriptions and bonds under the Act of 1868, we have a legislative, judicial and popular construction of it which, in my judgment, make it no longer an open question. The Legislature gave an interpretation to the Constitution by the Act of 1868, the highest judicial tribunal in the State sanctioned that construction in the Linn County case; the Convention of 1875 representing, as we assume, the will of the people, recognized this construction; and now this Court is called on at the end of ten years from the passage

of this Act, and after the investment of millions of dollars in bonds issued on the faith of legislative, judicial and popular interpretation, to declare the Act void, and all the money invested in bonds authorized by it, to have been thrown away. I prefer to decline this responsibility. Had I been on the bench when the Linn County case was determined and bonds were ordered to be issued, thereby affirming the Constitutionality of the Act of 1868, my opinion might have been otherwise than the one announced. As the opportunity did not offer, I can't say, with propriety, what my opinion would have been—but I can say now that whatever it might have been, I would never, subsequently to the action of the Counties in conformity to the opinion of the Court and the investment of capitalists in the bonds issued, undertake to set up any individual opinion in opposition to the declared sanction of the Court. The matter was *res adjudicata* so far as bondholders, who invested on the faith of it, were concerned, and so this Court declared in *State to the use of Neal vs. Saline County*, *48 Mo. 391*, and so this Court unanimously decided in *State vs. Miller*, 50 *Mo.* 129. In fact the Constitutionality of the Act of 1868, upon the point now urged, was never questioned in this State until the decision of the Supreme Court of the United States in *Harshman vs. Bates County*, a decision which that Court retracted on the first opportunity. So that when the present case arose the law had the sanction of the Legislature, the State judiciary, the Federal judiciary and the Constitution of 1875. Legislative, judicial and popular interpretation all correspond, and on the faith of this construction, bonds to the amount of millions of dollars were purchased by our citizens, and the only effect of the present decision is to annul their title, whilst the citizens of other States and foreigners may still proceed to get judgments and collect them.

I, therefore, dissent *in toto* from the decision''

The next decision in order was one made by Judges

Dillon and Krekel, in the Western District of Missouri, on the 18th day of April, 1878. (*C. L. J. vol. 6, page 345, Foote v. Johnson County.*) The language of the Court in that case is as follows:

"The Supreme Court of the United States considers questions arising upon negotiable municipal bonds issued under State authority, to relate to commercial securities and not to present questions of mere local law; and where such securities have been issued before any decision of the State tribunals denying the validity of the act authorizing the issue, the Supreme Court has declared that in protecting constitutional rights of creditors it will decide for itself whether, under the Constitution and laws of the State, such securities are valid or void. (*Township of Pine Grove v. Talcott, 19 Wall.*, 666; *Olcott vs. Supervisors, 16 Wall.*, 678.) The cases last cited related to bonds which had been issued under acts which had been declared unconstitutional by the Supreme Court of Michigan in the one case, and by the Supreme Court of Wisconsin in the other, *after* the bonds in question had been issued. The duty of the Supreme Court of the United States to follow the judgment of the Supreme Court of the State was strongly urged by Counsel. But the Supreme Court was of a different opinion, and in the case first cited, Mr. Justice Swayne expresses the views of the Court on the subject in language so emphatic and decisive, as not to be mistaken. He says:

"The question before us belongs to the domain of general jurisprudence. In this class of cases this Court is not bound by the judgment of the Courts of the State where the cases arise. It must hear and determine for itself. Here commercial securities are involved. When the bonds were issued, there had been no authoritative intimation from any quarter that such statutes were invalid. The Legislature affirmed their validity in every act by an implication equivalent in effect to an express declaration. And

during the period covered by their enactment, neither of the other departments of the government of the State lifted its voice against them. The acquiescence was universal. The general understanding of the legal profession throughout the country is believed to have been that they were valid. The National Constitution forbids the States to pass laws impairing the obligation of contracts. In cases properly brought before us, that end can be accomplished unwarrantably no more by judicial decisions than by legislation. Were we to yield in cases like this to the authority of the decisions of the Courts of the respective States, we should abdicate the performance of one of the most important duties with which this tribunal is charged and disappoint the wise and salutary policy of the framers of the Constitution in providing for the creation of an independent Federal judiciary. The exercise of our appellate jurisdiction would be but a solemn mockery."

Afterwards, *to-wit:* on May 16, 1879, an act was passed by the Legislature, and approved, to authorize Counties, Cities, Townships and towns to fund all or any part of their bonded indebtedness and unpaid subscriptions to the capital stock of any Railroad Company, as had been previously done by the Acts of March 27, 1875, April 12, 1877, and April 14, 1877.

Laws of Missouri, 1879, *page*, 48.

Since the passage of this Act, municipal authorities in the State, including Townships, have been engaged in the very creditable work of funding and paying their debts in cases where they are able to do so, and compromising them and issuing bonds for a less amount in cases where they are not able to pay all.

The cases of *Olcott v. Supervisors*, 16 *Wall*, 678 (*decided in* 1872) was one in which Fond du Lac County, Wisconsin, had ordered a subscription to the Sheboygan Railroad Company under authority of an act passed by the

General Assembly in 1867 to construct a railroad from Fond du Lac to Ripon in that State. After the bonds had been issued and sold in the market but before the trial of the case, inthe Circuit Court of the United States for the Eastern District of Wisconsin, the Supreme Court of that State, in the case of *Whiting v. Fond du Lac County*, 25 Wis., 188, held the act under which the bonds were issued to be void, and this decision was afterwards affirmed in *Curtis v. Whipple*, 24 Wis., 350. On the authority of this case of Whiting decided by the State Supreme Court, the Circuit Court of the United States held the bonds to be void; the case was then appealed to this Court, and in its opinion this Court used the following language:

"The nature of taxation, what uses are public and what are private, and the extent of unrestricted Legislative powers, are matters which, like questions of commercial law, no State Court can conclusively determine for us. This consideration alone satisfies our minds that *Whiting v. Fond du Lac County* furnishes no rule which should control our judgment, though the case is undoubtedly entitled to great respect.

There is another consideration that leads directly to the same conclusion. This Court has always ruled that if a contract when made was valid under the Constitution and laws of a State, as they have been previously expounded by its judicial tribunals, and as they were understood at the time, no subsequent action by the legislature or the judiciary will be regarded by this Court as establishing its invalidity, such a rule is based upon the highest principles of justice. Parties have a right to contract, and they do contract in view of the law as declared to them when their engagements are formed. Nothing can justify us in holding them to any other rule If, then,the doctrine asserted in *Whiting vs. Fond du Lac County* is inconsistent with what was the recognized law of the State when the County orders

were issued we are under no obligation to accept it and apply it to this case. The orders were issued in February, 1869, and it was not until 1870 that the Supreme Court of the State decided that the uses for which taxation was authorized by the statute of April 10, 1867, were not public uses, and therefore that the statute was invalid Prior to 1870 it seems to have been as well settled in Wisconsin as elsewhere that the construction of a railway was a matter of public concern, and not the less so because done by a private coporation."

Ohio Life & Trust Co. vs. Debolt, 16 *How.*, 432;
Gelpcke vs. City of Dubuque, 1 *Wall.*, 175;
Havemeyer vs. Iowa City, 3 *Wall.*, 104;
Jefferson Branch Bank vs. Skelley, 1 *Black*, 436;
Supervisors vs. Schenck, 5 *Wall*, 772;
Moran vs. Miami County, 2 *Black*, 722;
Van Hostrop vs. Madison City, 1 *Wall.*, 291;
Meyer vs. Muscatine, 1 *Wall.*, 384;
Thompson vs. Lee County, 3 *Wall.*, 327;
Rogers vs. Burlington, 3 *Wall*, 654;
Van Hoffmann vs. Quincy, 4 *Wall.*, 535;
Swift vs. Tyson, 16 *Peters*, 19;
Johnson vs. Cass County, 95 *U. S.*, 360;
Butz vs. Muscatine, 8 *Wall.*, 575;
Olcott vs. Supervisors, etc., 16 *Wall.*, 678;
City vs. Lamson, 9 *Wall.*, 477, (486.)

In the case of Butz against Muscatine (8 *Wall.*, 584) this Court said:

"This Court construes all contracts brought before it for consideration and in doing so its action is independent of that of the State Courts, which may have exercised their judgment upon the same subject. This is one of the func-

tions we are called upon to perform in this case. The fact that one of the limitations in the case is a statute of the State does not affect the legal result. We are of the opinion that, under the statutes of Iowa in force when the contract was made, the relator is entitled to the remedy he asks, and that this right can no more be taken away by subsequent judicial decisions than by subsequent legislation. It is as much within the sphere of our power and duties, to protect the contract from the former as from the latter and we are no more concluded by one than by the other. We cannot in any other way give effect to the contract between the parties as we understand it. This contract was entered into in 1854. The earliest of the adjudications to which we have referred was made in 1862. If the construction ultimately given to the statute had preceded the issuing of the bonds and become the settled law of the State before that time, the case, as regards this point, would have presented a different aspect.

In the case of *Supervisors vs. Schenck*, (5 *Wall.* 772), this Court (page 784) used the following language:

"Attention is drawn to the fact that in a recent case not yet reported, the Supreme Court of the State has held that these bonds are void, even in the hands of an innocent holder, but inasmuch as the power to issue the bonds was fully conferred by law, the question of their validity in the hands of innocent holders, without notice, is a question of commercial law, where the State adjudications, although entitled to great respect, do not furnish the rule of decision in this Court. Prior decisions of the State Court were in accordance with the decisions of this Court and as those decisions were supposed to be correct expositions of the law of the State at the period when these bonds were issued, the latter adjudications cannot control the judgment in this case."

"The sound and true rule is that if the contract when made was valid by the laws of the State as then expound-

ed by all departments of the Government and administered in its Courts of Justice, its validity and obligation cannot be impaired by any subsequent action of the Legislature or decisions of its Courts altering the construction of of the law."

Ohio L. I. & T. Co. v. *Debolt*,, 16 *How.* 432. *State v. Miller*, 50 *Mo.* 129.

"It cannot be expected that this Court will follow every such oscillation from whatever cause arising that may possibly occur. The earlier decisions we think, are sustained by reason and authority. They are in harmony with the adjudications of 16 States of the Union. * * * Bonds and coupons like these, by universal commercial usage and consent, have all the qualities of commercial paper. * * * We are not unmindful of the importance of uniformity in the decisions of this Court and those of the highest local Courts giving constructions to the laws and Constitution of their own States. It is a settled rule of this Court, in such cases to follow the decision of the State Courts, but there have been heretofore in the judicial history of this Court, (as doubtless there will be hereafter,) many exceptional cases. We shall never immolate truth, justice and the law because the State tribunal has erected the altar and decreed the sacrifice."

1 *Wall 296.*

EXAMINATION OF THE LATE OPINIONS OF THE SUPREME COURT OF MISSOURI.

In a late opinion of the Supreme Court of Missouri declaring unconstitutional the Township Aid Act, it is insisted by the Court that the true test of the number of voters in any municipality must have been determined by the registration lists. That this claim is utterly impossible, the following propositions will show:

1. During the entire period while the Convention which framed the Constitution of 1865 was in session not less than one-half of those qualified to vote under the instrument framed were absent from their respective Counties, engaged tn the "volunteer armies of the State and of the United States;" and it is expressly provided (Art. 2, Sec. 21,) that all such persons, "whether within or without the State, shall *without registration* be entitled to vote at any election." And it is a notorious fact that the Constitution itself would have been defeated by the popular vote but for the poll books sent in by Missouri regiments abroad. Coustitution, art. 13, sec. 2.

The Convention during its session adopted an ordinance for the organization of the Missouri militia, by which the entire body of male inhabitants between the ages of eighteen and forty-five were sworn to loyalty and mustered into service; and any person refusing the oath "shall be considered and treated as a prisoner of war." See ordinance, secs. 1, 2 and 13.

It is safe to say, that, in some Counties of the State, even when the Convention adjourned, three-fourths of the voters were under arms. All these could vote without registration. Can it be possible under these circumstances, that the Convention intended to declare that the registration lists should be taken as a test of the the number of qualified voters? Suppose the Legislature had declared in the Township Act that a two-thirds majority of the "registered" vote should be required, and a case should occur where the registered vote unanimously favored subscription and the soldiers' vote, double in number and equally "qualified" should be unanimous against it, would the Court accept this as the true interpretation of the Constitution?

2. Neither the Constitution nor the laws passed in pursuance thereof undertook to make registration lists evi-

dence of the number of qualified voters in any County or precinct.

These lists simply enable the person presenting himself, to vote, without further proof of qualification. Constitution, 1 Wagner Stat. 39, art. 2, sec. 4. The Constitution is silent as to the evidence necessary to establish the number of "qualified voters" in a district. It is therefore competent for the Legislature to declare the rule.

3. Registration under the law was required only biennially, and all deaths and removals of registered voters must have been deducted from the registered lists in order to determine the number of qualified voters left thereon. No provision of law was made or could be made to ascertain these deaths and removals; and in a community so changeable as that of Missouri, pouring out a constant stream of emigration to the West, it is insisted that an *actual* vote at any given period was a better test of the number of qualified voters, than a registered list prepared perhaps nearly two years before.

4. The Constitution (art. 3, sec. 17) disqualified all persons, as voters, who made wagers on the result of the election; and the laws (Session Acts 1868, p. 137, sec. 32) expressly authorized the judges of election to reject the ballots of such persons, although registered, as qualified voters; and no list or record of such rejections was required to be made or kept.

5. Registration in a district different from that of the voter's residence, or registration in a false name, or in more than one district, disqualified the voter (see section 40 of the same act) and hence the additional absurdity of making a registered list conclusive of a fact, which must, in the very nature of things, be incorrect. Its only purpose was to give the right *prima facie* to the voter to cast his ballot. It could not guarantee that none should die, that none should emigrate and none should disqualify themselves before the election.

The object of the Constitution was to obtain the assent of two-thirds of the actual, living, resident voters, the body politic, at the moment, and not two-thirds of a registered list which might represent more or less than the whole number of qualified voters.

It is not sufficient to say that those voting may be less than those registered. It is equally true that the number constitutionally authorized to vote—"the qualified voters"—may be twice or thrice the number registered. How, then, can the registration list be accepted as a test? The Courts must avoid constructions leading to absurdities or impossibilities.

6. The Constitution left the Legislature to adopt a system of registration or not, and even gave it power to suspend or repeal all provisions of the Constitution touching registration, after a given time. In other words, it was intended that registration should be temporary. Art. 2, sec. 25. Elections must be permanent. Could it have been designed that this uncertain, evanescent, repealable provision, should be established as a fixed standard to measure that which was intended to outlive it? What would be the standard when registration ceased to exist?

This view is fully confirmed by the opinion of the Supreme Court of Missouri in the case of *Zeiler vs. Chapman*, rendered at the January Term, 1874. This case arose under the new Constitution and after registration had been adopted and put in force. The statement of the case as developed in the opinion of the Court is as follows:

"Chapman, the contestee, received a majority of the votes cast in the County, and, upon the returns, was declared elected and duly commissioned as Treasurer. The returns included 139 votes cast for him in Dover precinct, whereas the registration books at that precinct only showed about 30 voters who were registered. Excluding the non-registered votes at this precinct, Chapman did not have a

majority of the votes unless 291 voters who were returned as 'rejected voters' and who voted for him, were to be counted."

Upon this statement of fact, the Court proceeded:

"We think the decision of the Court (the Circuit Court) was right on this point, although the voters had taken the oath of loyalty and had been duly registered. The judges of election had still the right under the law to reject them, and if they were improperly rejected, that should have been shown by the party claiming an improper and illegal rejection." *Zeiler vs. Chapman*, 54 *Mo.* 502.

In the case of *Webb* v. *Lafayette County*, *67 Mo. 354*, (the particular case in which the unconstitutionality of the Township Aid Act was asserted) it is decided that the Legislature cannot authorize Townships to subscribe to the capital stock of corporations and issue bonds without first declaring them municipal corporations; and the learned Judge, delivering the opinion of the Court, proceeds:

"While the decisions of Courts of the highest character in three-fourths of the States have established the right of State Legislature, unless forbiden by organic law, to exercise the extraordinary power authorizing municipal corporations to impose taxes and contract debts for the purpose of constructing railways, the doctrine was, in most cases, dissented from by eminent judges, and has always met with much professional disapproval. * * * But the question whether the power existed in the Legislature to confer the right upon any other than a municipal or *quasi* municipal corporation is not of that character, and we are inclined to deny that such power existed, either in the Constitution of 1820 or that of 1865."

The Honorable Court, in using this language, must certainly have been oblivious of the questions decided, in the case of the *State of Missouri to the use of Neal v. Saline*

County, at the August term, 1871 and reported in 48 Mo. 390. This case arose under the Constitution of 1820, and the bonds then before the Court had been issued by the County Court of Saline County for one of the municipal Townships of the County combined with a part of another Township, and it was not pretended that the Townships or either of them had been incorporated by the Legislature. The Court in delivering its opinion, said:

"The liability of municipal and of *quasi* municipal corporations for the acts of their lawful agents in issuing negotiable bonds has been considered by this Court upon various occasions, and the subject was elaborately discussed at our last March Term in *Steins v. Franklin County*, (*ante p.* 167.) The doctrines there affirmed have always been recognized by us and are founded upon the broadest principles of justice. These bonds are treated like negotiable commercial paper, and, after they have been transferred in the usual course of business, the authority to execute and issue them is almost the only question open to consideration. The question of authority necessarily arises from the fact that they are executed by agents, and we have only to consider what constitutes authority. * * I am of the opinion that as to those who have advanced their money on the faith of the action of such authorities, the Townships interested in the railroads are concluded. A submission was had, a majority voted for the railroad, and there does not appear to have been any actual imposition as to the object of the vote; no fraud is claimed, the County Court ignored the irregularity and issued the bonds; a few of them came into the relator's hands for value. Now, in all honesty and fairness, should he suffer from the blunders of the Court? Clearly not; but if there is any loss, it should fall upon those who authorized the Court to act for them, though the authority was more general and indefinite than the law contemplated." The "irregularity" referred to by Court in this opinion is explained in 45 Mo.

242, and consisted of the fact that the law required that in the order of the County Court submitting a proposition for railroad subscription to the people, the precise amount of the subscription should be stated. In this case the order did not specify the amount.

The Honorable Court seems to have been equally oblivious of the questions discussed and settled by the case of *State vs. The Linn County Court* already referred to. The latter case arose under the Constitution of 1865. On page 510 of the volume (44), the question is pre sented as follows:

"As to the first ground; that the Township is not a corporation nor even a *quasi* corporation and has no authority to make the bonds and that, consequently, they would be the bonds of Linn County, I do not think the objection is insuperable. The Township is a legal subdivision of the County, is an organization for certain municipal purposes but it has no power by itself, to make independent contracts or to become bound in its separate capacity. The law has not invested it with that power; it forms an integral part of the County, and the County, to a certain extent, controls and acts for it. * * * It is true, the County Court is made the medium through which the bonds were to be issued, and they were to be issued in the name of the County. This is done, I suppose, because the Townships have no distinct and independent political organization. But still the law requires that the subscription should be made by the Court in behalf of the Township, and it provides for the payment of the interest and principal by the Township exclusively. The mode of subjecting the property in the Townships made liable for the payment of the taxes is already pointed out. * * * The bonds are not, therefore, in any sense County bonds; the subscriptions are essentially Township subscriptions, and the bonds are, to all intents and purposes, Township bonds; and the County

Courts and the Counties named are merely made use of as agents to effectuate and carry out the object."

After showing that the power existed in the Constitution of 1820 to authorize such subscription the Court proceeds:

"The new Constitution (1865) has not abridged this power. It only requires a different mode of proceeding, and that two-thirds of the qualified voters shall assent thereto before any subscription shall be authorized to be made."

It thus appears that this question which is now arrayed as a formidable objection to the Township Act was twice decided directly against the view now taken by this Court, the first time in 1869, and afterwards in 1871.

In this case of *Webb vs. Lafayette County*, the Act of 1868 is further denounced as unconstitutional, because of the 5th section therein, which provides for the application of the taxes which may be levied upon any railroad built under the provisions of the Act; first, to the payment of the subscription, and afterwards, to the school fund of the corporation or *quasi* corporation making the subscription. It is argued that this 5th section of the Act contravenes the provision of the State Constitution of 1865 which declares that "the credit of the State shall not be given or loaned in aid of any person, association or corporation." It is difficult to determine how a simple provision prohibiting the State from taking stock in a railroad company can be construed as a limitation upon the power to tax or to refrain from taxing, in any manner the Legislature may see fit.

It will be observed that this provision did not attempt to control the taxes upon property already in existence; it provided simply for the disposal of taxes to be levied upon property not yet constructed in the State. The State may make a contract not to exercise the taxing power or to ex-

ercise it only in a certain manner, and with respect to a particular subject.

New Jersey vs. Wilson, 7 Cranch, 164;

Jefferson Branch Bank vs. Skelly, 1 Black, 436;

Piqua Branch Bank vs. Kuoop, 16 How. 369;

Dodge vs. Woolsey, 18 How. 331;

A State Legislature may exercise all powers which are properly legislative, unless they are forbidden by the State or National Constitution. This is a principal that has never been called in question.

Railroad Company vs. County of Otoe, 16. Wall 673.

The prohibition contained in the Constitution of Missouri and referred to by the local Court, is directed only against the issue of State bonds to Railroad Companies, either by loan, gift or stock subscription. It does not affect the power of taxation or restrict the rights of eminent domaine. The Act of 1868, does, in no manner, directly or indirectly, authorize the giving or loaning of the State's credit. State Constitutions usually contain provisions that no person shall be compelled to support any place of worship, or contribute to the maintenance of any religious sect or the support of any teacher of religion. Are such provisions ever construed to prevent legislative acts exempting church property from taxation?

Suppose the Missouri Constitution prohibiting, as it did, a loan of State aid to railroads, had been silent as to municipal loans; can it be doubted that the Legislature was restrained from authorizing municipalities to take stock in such companies or to loan their credit? Such an argument was advanced in this Court and met by the opinion in 16 *Wall.* 667, where it is said the power "is not only plain in reason, but is established by a number and weight of authorities beyond what can be adduced in support of almost any other legal proposition."

The chief point of objection made, however, against the constitutionality of this Act in the late decisions of the Supreme Court of Missouri consists in the fact that the Act of the Legislature only requires two-thirds of the voters voting instead of two-thirds of all.

It has already been shown: 1. That the Legislative act is precisely the same as the constitutional provision; that such construction has been universal by the Courts—State and National; (see Appendix to this brief,) that such has been the practice under the Constitution of the State of Missouri at all elections in said State since the adoption of the Constitution of 1865; the judges of election certified nothing except the result ascertained by votes taken on the day of election and depositedin the ballot box; no other test was ever required and no provision made for ascertaining or reporting any other than the result of the ballots cast; all elections were determined and all officers installed into office upon the majority asascertained upon the actual count of ballots cast into the ballot box.

"We conclude, therefore, that the Supreme Court of Missouri, when it decided the case of *State vs. Linn County*, and held the law in question to be Constitutional, did not overlook the objection which is now made, but considered it settled by previous adjudications. That case is, therefor, to be considered as conclusive upon the question."

Cass County vs. Johnson, 5 O. 369.

"Prior decisions of the State Court were in accordance with the decisions of this Court, and as those decisions were supposed to be correct expositions of the law of the State at the period when these bonds were issued, the latter adjudications cannot control the judgment in this case."

Supervisors vs. Schenck, 5 Wall. 785.

2. Whatever may have been the true meaning of the Constitution and whatever may have been the defects of

the Act of 1868, it is now too late to question the validity of bonds issued under it. A State Constitution must receive an interpretation according to the sense in which the people are supposed to understand its language. The entire history of the State in all its departments of Government shows the acquiescence of the people in the construction given the Act as early as 1868. A long series of Legislative Acts and an uninterrupted line of decisions by the Supreme Court of Missouri show beyond all question that the late conclusions of the Supreme Court cannot be followed without perpetrating the grossest outrage upon private rights.

"Where solemn determinations, acquiesced in, have set tled precise cases and the rule of property, they ought, for the sake of certainty, to be observed."

Lord Mansfield, in 1 Burr. 119.

"It is more important to have the rule settled than to determine what the rule shall be."

Lord Ellenborough, in 2 East, 302.

"The Court should state whether the point involved is such as to have become the rule of property so that titles have been acquired in reliance upon it, and whether vested rights will be disturbed by any change "

Cooley on Const. Lim. p. 52.

"It is only where they (State Constitutions and laws) have been construed differently at different times that in cases like this, we have adopted as a rule of action the first decision and rejected the last This has been done on the ground that rights obtained on the strength of the former decisions are not to be lost by a change of opinion in the Court."

Elmwood v. Marcy, 2 Otto, 289, (294).

3. The Circuit Courts of the United States in Missouri, for a long series of years, and the Supreme Court of the

United States, in the case of *Cass County v. Johnson*, affirmed the validity of the Act of 1868, and upheld securities issued under its provisions before the Supreme Court of Missouri declared it to be unconstitutional; and, according to the repeated decisions of this Court in such cases, its decisions will not be changed in order to conform to State adjudications subsequently made. The bonds issued are commercial securities, they are complete on their face, they are in the hands of *bona fide* purchasers for value, and the authorities are absolutely estopped from denying their validity.

In one of the cases they have received the endorsement of an Executive officer of the State declaring their validity and this declaration is endorsed upon the back of each bond; and in both cases the bonds contain sufficient recitals of their validity under the Constitution and laws of the State; in such a case, this Court cannot do otherwise than uphold the validity of the bonds.

4. The bonds in question being commercial securities, and recognized as valid when issued: and this Court having held them valid before any adverse decision by the local Courts, this Court must decide for itself.

"Attention is drawn to the fact that in a recent case, not yet reported, the Supreme Court of the State (Illinois) have held that these bonds are void, even in the hands of an innocent holder, but inasmuch as the power to issue the bonds was fully conferred by law, the question of validity in the hands of innocent holders, without notice, is a question of commercial law where the State adjudications, although entitled to great respect do not furnish the rule of decision in this Court."

Supervisors vs. Schenck, 5 Wall. 772.
Swift vs. Tyson, 16 Peters 1.

HENDERSON & SHIELDS,

Attorneys for Plaintiffs-in-error.

APPENDIX.

"The decisions of the Supreme Court of Missouri, commencing with the Linn County case in 1868 and continuing down to 1878, in which the constitutionality of the Act of March 23, 1868 and the validity of bonds issued under it were in question, are supported by the decisions not only of this Court but by nine-tenths of the State Courts of the Union."

McCrary on Elections, section 183.
Dillon on Mun. Corp., section 215.
Damon v. Granby. 2 Pick., 345–355.
Williams v. Lunenberg, 21 *Pick.*, 75.
The Church Case, 5 Robert (*N. Y.*) 649.
1st Parish v. Steins, 21 Pick., 148.
People v. Warfield, 20 Ills. 163, (1868).
People v. Garner, 47 *Ills.*, 246, (1868).
Melvin et al. v. Lisensby, 72 *Ills.*, 63, (1877).
People v. Wyman. 48 *Ills.*, 263.
Railroad v. Davidson Co., 1 *Sneed*, (*Tenn.*) 692.
Taylor v. Taylor, 10 *Minn.*, 107.
Gillispie v. Palmer, 20 *Wis.*, 544.
State v. Woodford, 15 *Kas* , 600.
Reiger v. Commissioners, 70 *N. C.*, 319

In Warfield's case (decided in 1858), the Constitution of Illinois, adopted in 1848, had provided "that no County seat shall be removed until the point to which it is proposed to be removed shall have been fixed by law and a majority of the voters of the County shall have voted in favor of its removal to such point." Under this Constitution, the Legislature passed an act authorizing the re-

moval of County seats when approved by a majority of those voting on the question. In a case presented, the Supreme Court of that State used the following language:

"We understand it to assume, and such, we believe, was the understanding of its framers: that the voters of the County referred to were the voters who should vote at the election authorized by it. If we go beyond this and inquire whether there were other voters in the County who were detained from the election by absence or sickness, or who voluntarily absented themselves from the polls we should introduce an interminable inquiry and invite contests in elections of the most harassing and baneful character, if we did not destroy all the practical benefits of laws passed under these provisions of the Constitution. We hold, therefore, that a majority of the legal voters cast at this election is sufficient to determine the relocation of the County seat."

The case of *Garner* (reported in 47 Ills.) involves a similar question. The Constitution had provided for Township organization "whenever a majority of the voters in such County at any general election shall so determine." The Legislature in carrying out this provision enacted, "that a majority of the voters voting at such election shall be taken and deemed a majority of the voters of said county." 2 *Ills. Stat.* 1856, *page* 1135, § 4.

The Supreme Court, in a case before it, said: "If we take the vote actually polled as being evidence of the number of the voters of the County, then the means are plain and easy of application, but if any other mode be resorted to, there must result great inconvenience, uncertainty and delay. It is stated that the registry of the vote immediately before the election in 1865 affords a more reliable rule; we fail to see that, and its result in this case is that 158 votes were cast by persons whose names were not on the registry list; it thus appears, to that extent, it was certainly incorrect, and, for aught we know, those failing to vote

(whose names were registered) may not have been legal voters. * * * We may well conclude that names were, on the other hand, retained on the registry list who were not legal voters—persons having left the town, County or State. We, therefore, regard the registry list as affording no more or better evidence than the poll books. * * * We must hold that the vote cast is *prima facie* evidence not only of the result of the election but also of the number of legal voters in the County; and that this presumption will be acted upon until it is rebutted; and that the registry list did not rebut or overcome the presumption."

In *Taylor's* case (10 *Minn.*) the Constitution required that "all laws changing County lines, before taking effect, shall be submitted to the electors of the Counties to be affected thereby, * * * and be adopted by a majority of such electors." The Legislature passed an act in the language of the Constitution to remove the County seat of Chisago County; it was objected that less than a majority of the electors had voted on the question. The Supreme Court said: "The law presumes that every citizen does his duty, and in the eye of the law those present and voting at such election constituted the electors of the County. This construction effectuates the purposes of the framers of said section and makes it speak a sensible and consistent language, and we think, therefore, it is the true one. No reason was here given why an absolute majority should be given, nor has a precedent been cited or a single instance in any State where such absolute majority is required, and we think no such reason can be given or precedent cited."

In *Reiger's* case, the town of Beaufort, N. C., was authorized to issue bonds when sanctioned "by a majority of said voters qualified to vote for Commissioners." It was admitted on an agreed case that less than a majority of all the voters qualified to vote did appear and vote for the subscription. The Supreme Court said:

"All voters of the town who do not choose to attend at the polls are to be taken as assenting to the result of the election, according to the voters actually polled. This is the usual course."

In the case of *Davidson County* (reported in 1 sneed) the Supreme Court said:

"The question made is whether this Act requires a majority of all the legal voters residing in the County at the time of the election or only a majority of those who may attend the polls and actually vote. We are referred to the latest State and County election which shows the number of voters in the County and then to the vote on *this* question to prove that the number of affirmative voters falls very far short of the legal voters in the County, though they exceed by several hundred the negative voters. * * * When the question of an election is put to the people and is made to depend on the vote of a majority, there can be no other test of the number entitled to vote but the ballot box; if, in fact, there be some or many who did not attend and exercise the privilege of voting, it must be presumed that they concur with the majority who did attend, if, indeed, they can be known to have any existence at all."

A case reported in 15 Kansas is one where the Constitution required that "no County seat shall be changed without the consent of the majority of the electors of the County." In the Legislative Act on this subject it is provided that "places having received a majority of the votes cast shall be proclaimed by the Commissioners the County seat of the County." The Supreme Court said:

"In this case, the Legislature has said that the place receiving a majority of the votes cast shall become the County seat, thus making the number of votes *cast* the evidence of the number of electors. The Legislature might make other things evidence of this fact; it might re-

quire as a preliminary to every election a registration, and make the registration evidence. * * * But when it adopts as conclusive evidence of the fact anything which, according to the rules of human experience, reasonably tends to prove the fact, the Courts are not at liberty to ignore or go beyond such evidence."

"All qualified voters who absent themselves from an election duly called are presumed to assent, to the expressed will of the majority of those voting, unless the law providing for the election otherwise declares. Any other rule would be productive of the greatest inconvenience and ought not to be adopted, unless the Legislative rule to that effect is clearly expressed."

Cass County vs. Johnson, 5 Otto, 360.

No......

——*IN THE*——

Supreme Court of the United States,

OCTOBER TERM, 1879.

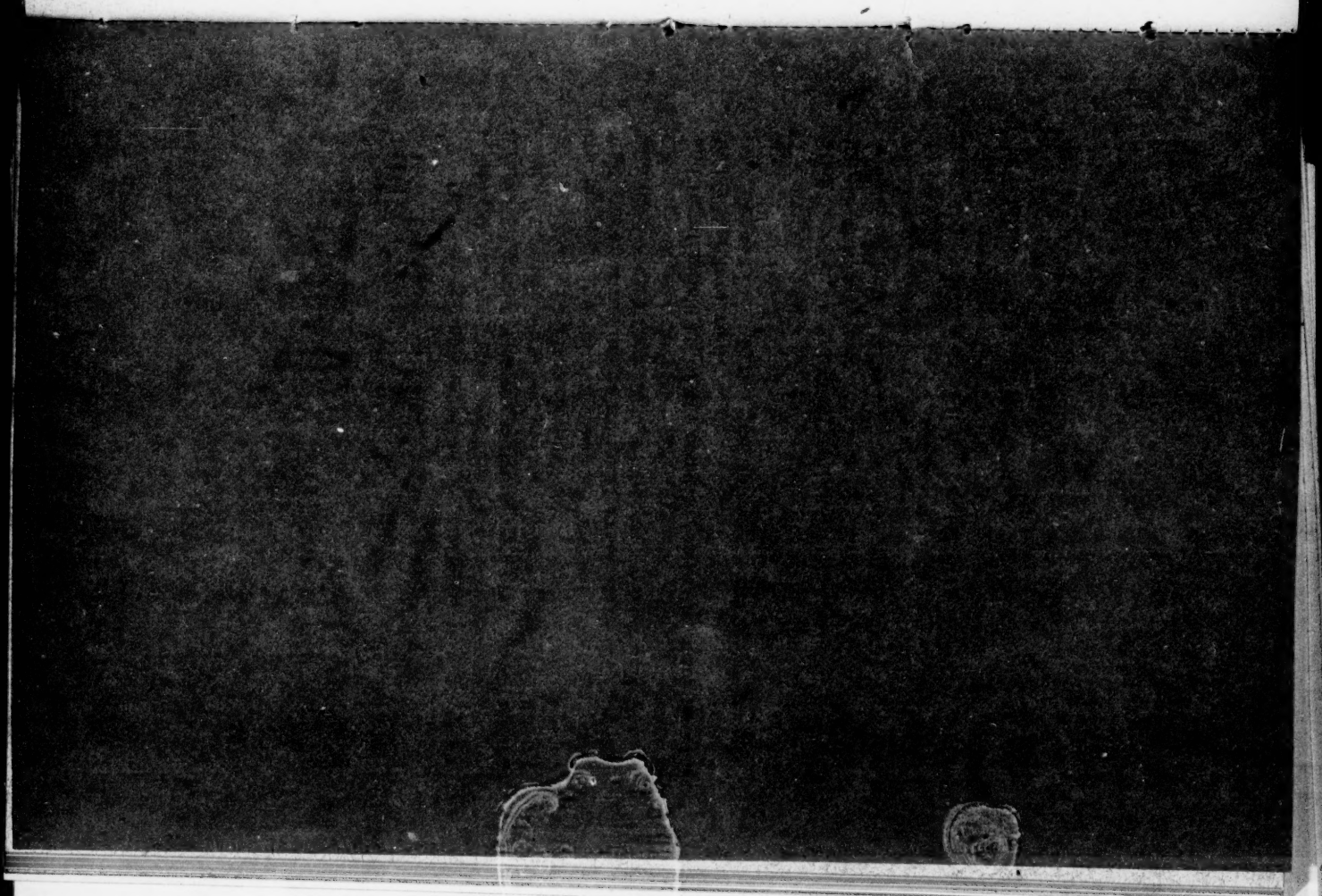
ELISHA FOOTE,
Plaintiff in Error.
vs.
THE COUNTY OF PIKE.

In Error to the Circuit Court of the United States for the Eastern District of Missouri.

Argument in Behalf of Defendant in Error,

PREPARED BY WILLIAM YOUNG, LEXINGTON, MO.

1879:
INTELLIGENCER NEWS, BOOK AND JOB POWER PRINT.
LEXINGTON, MO.



In the U. S. Supreme Court.

Argument in Behalf of Defendant in Error.

The only point sought to be made in this argument is, that in this case this court will follow the decisions of the Supreme Court of Missouri in the cases of State vs. Brassfield 67 Mo., 331, and Webb vs. Lafayette County, 67 Mo., 353.

In these cases it is decided that the act of the General Assembly of the State of Missouri, entitled "An act to facilitate the construction of railroads in the state of Missouri," approved March 23rd, 1868, recited in the bonds sued on as the authority for their issuance, is in conflict with sections 13 and 14, of article 11, of the constitution of the state, and the bonds therefore void.

We will discuss the question of the rulings of the court upon the 14th section first.

The decision of the state courts, in the two cases above recited, is that the act of the General Assembly, March 23rd, 1868, (Wagner's Statute, 1870, page 313 section 51,) which authorizes subscriptions to railroads upon two-thirds of the voters, voting at the election, voting in favor thereof, is in conflict with and prohibited by the 14th section of the 11th article of the constitution, which declares that the General Assembly shall not authorize such subscriptions, except two-thirds of the qualified voters assent thereto.

As to what would be the correct construction of this section, in connection with the statute, if it was now for the first time to be construed upon general principles of law, we will offer no suggestion.

In Harshman vs. Bates County, decided in this court at the October term, 1875, 2nd Otto, 569, this court's own construction was given to section 14, and the law of March 23rd, 1868, declared unconstitutional.

In County of Cass vs. Johnson, 5th Otto, 360, the former

decision was, by this court, overruled at the October term, 1877, citing the State vs. Linn County, 44 Mo., 504, and cases following as authority for so doing.

In State vs. Brassfield, 67 Mo., 331, and Webb vs. Lafayette County, 67 Mo., 353, decided at the April term of the Supreme Court of the state of Missouri, the state court held the act of the legislature unconstitutional as subversive of the said 14th section of the constitution, saying that the point there raised had never been passed upon by that court in any former decision.

These are the last expressions of the highest state judicial tribunal, and are unmistakable in their terms.

Will the court disregard the decision in County or Cass vs. Johnson, 5th Otto, 560, and follow the construction given by the state court to the state constitution, and its adjudication on a local law?

This very question was before the court at the present term, and was the only question considered by the court in Fairfield vs. County of Gallatin, 9 Cent., L. J., 467.

The opinion in that case is so comprehensive, and the doctrine so carefully and thoroughly discussed, that we will take it as the foundation of our argument, and because it is the latest utterance of the court on the point here made.

If it can be shown that the present case comes under the rule as expounded in that case, our task is done.

The conclusion of the court may be succinctly stated as follows: In cases depending upon the constitutionality of a statute of a state, the Supreme Court of the United States adopts the construction given it by the highest tribunals of the state, when that construction can be ascertained, and will reverse its own decision construing it when in conflict with the last decisions of the state court.

Of this rule the learned judge in delivering the opinion of the court says: "Undoubtedly some exceptions to it have been recognized. One of them is, that when the highest court of a state has given different constructions to its constitution and laws at different times, and rights have been acquired under the former construction, we have followed that and disregarded the latter."

This cannot be strained to imply that because a law has been attacked as unconstitutional on one ground, and is up-

held by the court on that point, and afterward declared unconstitutional on another ground, not noticed or advanced in the former case, that the former case will prevail. The true meaning is when the decisions are in direct conflict on the same point and rights acquired under the former, the course indicated will be followed. As a proof of which, immediately following the language quoted the opinion proceeds: "The present case is not within the exception, for there has been no *conflicting* interpretations by the state courts of the *section of the constitution* we are now called upon to construe."

A further and conclusive proof is the case of Boyd vs. Alabama, 4th Otto, 645, where the court says: "The fact that acts may, in this way, have been *often* before the court, is never deemed a reason for not subsequently considering their validity when the question is presented. Previous adjudications upon other points do not operate as an estoppel against the parties in new cases, nor conclude the court upon the constitutionality of the acts because that point might have been raised and determined in the first instance."

We urge that there has been no conflict in the decisions of the state court on the point upon which the two last decisions of the state court (State vs. Brassfield, and Webb vs. Lafayette County) was based.

The state court in its decisions say that the point had never been passed upon by that court in any former decision. And in the opinion of this court, in County of Cass vs. Johnson, after citing all of the bond cases since the adoption of the constitution of 1865, Mr. Chief Justice Waite, who delivered the opinion of the court, says: "It is true that the objection now made to the law was in no case presented or considered."

The only case where the 14th section was ever referred to before the ones relied upon here as authority, is the case of the State vs. Linn County Court. It was not there construed, and was only incidentally spoken of. It was there contended that the act required the issuance of county bonds; that the bonds sought by the writ of *mandamus* would be county bonds when an election had only been held in a township, and that the said section 14 required a vote of the *county* before county bonds could be issued. There was not one word about the act making a rule different from that of

the constitution in determining the majority required. The court decided that the bonds sought in accordance with the form required in the act, would be township and not county bonds, and from the very fact of such decision, the use attempted to be made of the 14th section could not be made, and it passed out of the view of the court, and was never construed. So the state court decides, and this court, in County of Cass vs. Johnson, in the language above quoted, also decided. In no other case, cited as following the Linn County Court case, was the section ever referred to, and Judge Wagner, in that very case, by his language, shows conclusively that the construction of the section was not even thought of in reference to the act, when he says: "The new constitution has not abridged this power. It only requires a different mode of procedure, and that *two-thirds* of the *qualified voters* shall assent thereto, before any subscriptions shall be authorized to be made," 44 Mo., 511.

The language here used is the language of the constitution itself, and it is apparent that the provisions of the act with regard to the proportion of votes it required, was not in view.

The case of Rowan vs. Runnels, 5th Howard, 134, does not apply here, for the facts and circumstances on which that decision was based were substantialy different. That was upon a contract executed while there was no other decision on the points raised save that of Groves vs. Slaughter, 15 Peters, 449, decided by this court. It was decided in Groves vs. Slaughter that certain contracts were valid; and this stood as the only rule of construction given by any court at the time the contract before the court in Rowan vs. Runnels was executed. Subsequently to the execution of the contract the state court decided such contracts to be invalid, and this court in Rowan vs. Runnels adhered to its decision in Groves vs. Slaughter. The opinion in that case shows, from the language used, that such was the state of facts, and that it was so decided for the double reason that the contract was made while the decision of this court stood as the only judicial exposition of the law, which exposition the court was still of the opinion was the correct one on principle. That part of the opinion of Rowan vs. Runnels, quoted in Fairfield vs. Gallatin, shows that such were the facts and such the reason of

that decision, and is as follows: "Undoubtedly this court will always feel bound to respect the decisions of the state courts, and *from the time they are made* will regard them as conclusive in all cases upon the construction of their own constitution and laws. But we ought not to give them a retroactive effect, and allow them to render invalid contracts entered into with citizens of other states, which, in the judgment of this court, were lawfully made."

The first part of the paragraph quoted shows that the contract had been executed before the decision of the state court was made, or else its decision would have been followed, and the latter part shows that it was executed while Groves vs. Slaughter was the only judicial interpretation of the law extant which had been decided on general principles, and which the court believed to have been correctly decided.

How essentially different the case here presented to the court: October term, 1875, Harshman vs. Bates County, this court decided on its own construction of the law and section of the constitution under consideration that the act of the legislature was unconstitutional and the bonds issued under it void, and this remained the rule of such property and of decision in all the courts of the state both federal and state for two years, and up until October term, 1877, when County of Cass vs. Johnson was decided overruling the former decision. At the April term, 1878, of the Missouri court, or six months after the decision in County of Cass vs. Johnson was rendered, the state court in the cases of State vs Brassfield, and Webb vs. Lafayette County decided the law unconstitutional, stating that it was done on points never before presented to that court for adjudication.

These pretended contracts had been executed long before any decision of any court on the constitutionality of the act of the legislature authorizing them to be issued.

Will deciding them to be void now be giving the decision of the state court a retroactive effect? No more so in principle than if they had been decided by the state court to be void long before the question had ever come before this court for adjudication, provided they had been issued before a decision had been made upon the point by any court at all.

The language used in the opinion in Rowan vs. Runnels

cannot be made applicable to the state of the law of this case as shown by the decisions of the courts, without making it cover every case where it is sought to invalidate a contract already executed, however, unauthorized by law.

It is said in Fairfield vs. County of Gallatin of the decision in Rowan vs. Runnels, that "The construction given by this court to the state constitution was adhered to in order to support a contract for slaves purchased, and apparently only for that reason."

But that cannot mean that this court has different rules of decisions on the same point, according to the effect the decision will have to sustain or defeat the action. Will not the court rather follow the rule irrespective of its effect on the cause of action, whether it supports it or whether it strikes it down?

To do otherwise would be to decide on which side the real merits of the case lie on the facts, and as in a case of this kind this court cannot try the merit, the decision of the case would turn upon a point on which the losing party is deprived of a hearing.

We beg the court not to conclude that the merits of this class of cases are against us. And as we are precluded from a trial upon the merits by the doctrine with regard to innocent purchasers, we ask for the full benefit of the law here invoked.

In the town of South Ottawa vs. Perkins, 4th Otto, 260. the decision of this court was, in substance, that: Except where the Federal constitution and laws are concerned, the courts of the United States, in passing upon the constitution and statutes of a state, conform to the construction of them by the highest state courts, and when the latter hold an act of the legislature void, the courts of the United States will hold likewise.

There was a dissenting opinion in that case, but not on that point, for upon that the court was unanimous. Mr. Chief Justice Waite for himself, and Mr. Justice Clifford, Mr. Justice Swayne and Mr. Justice Strong, in rendering the dissenting opinion says at the outset: "There is no doubt but that the construction which the courts of Illinois have uniformly given the constitution of the state, is binding upon us as a rule of decision. The difference between me and a majority of my brethren is as to the construction which has

been given, not as to its effect when ascertained. * * * Such a construction might and probably would be more logical; but our duty is to ascertain what has been done, and not what should have been;" and this was in the case of negotiable bonds of a municipal corporation, which had been on the market for over seven years when the decision was rendered.

May we not, then, conclude that the present case does not come under any of the exceptions noticed in Fairfield vs. County of Gallatin, and is entitled to the full benefit of the rule?

We cannot better conclude our discussion of the point urged, than by an extract from the opinion in the first case where the question came before this court for adjudication, Green vs. Neal's Lessee, 6 Peters, 291. "But the question is now raised whether this court will adhere to its own decision, made under the circumstances stated, or yield to that of the judicial tribunal of Tennessee. This point has never been before directly decided by this court on a question of general importance. * * * * On all questions arising under the constitution and laws of the Union, this court may exercise a revising power, and its decisions are final and obligatory on all other judicial tribunals, state as well as federal. A state tribunal has a right to examine any such questions, and to determine them, but its decision must conform to that of the Supreme Court, or the corrective power may be exercised. But the case is very different when a question arises under a local law. The decision of this question, by the highest judicial tribunal of a state, should be considered as final by this court; not because the state tribunal, in such a case, has any power to bind this court, but because, in the language of the court, in the case of Shelby et al vs. Guy, 11 Wheat. 361, 'a fixed and received construction by a state, in its own courts makes a part of the statute law.'

The same reason which influences this court to adopt the construction given to the local law, in the first instance, is not less strong in favor of following it in the second, if the state tribunals should change the construction. A reference is here made, not to a single adjudication, but to a series of decisions which shall settle the rule. Are not the injurious effects on the interests of the citizens of a state as great, in refusing to adopt the change of construction, as in refusing to adopt the first construction? A refusal in the one case as well as in the other has the effect to establish, in the state, two rules of property.

Would not a change in the construction of a law of the United States, by this tribunal, be obligatory on the state courts? The statute, as last expounded, would be the law of the Union; and why may not the same effect be given to the

last exposition of a local law by the state court? The exposition forms a part of the local law, and is binding on all the people of the state, and its inferior judicial tribunals. It is emphatically the law of the state, which the federal court, while sitting within the state, and this court, when a case is brought before them, are called to enforce. If the rule, as settled, should prove inconvenient, or injurious to the public interests, the legislature of the state may modify the law, or repeal it.

If the construction of the highest judicial tribunal of a state form a part of the statute law, as much as an enactment of the legislature, how can this court make a distinction between them? There could be no hesitation in so modifying our decisions as to conform to any legislative alteration in a statute; and why should not the same rule apply when the judicial branch of the state government, in the exercise of its acknowledged functions, should, by construction, give a different effect to a statute, from what had at first been given to it. The charge of inconsistency might be made with more force and propriety against the federal tribunals for a disregard of this rule than by conforming to it. They profess to be bound by the local law, and yet they reject the exposition of that law which forms a part of it. It is no answer to this objection that a different exposition was formerly given to the act which was adopted by the federal court. The inquiry is, what is the settled law of the state at the time the decision is made. This constitutes the rule of property within the state, by which the rights of the litigant parties must be determined.

As the federal tribunals profess to be governed by this rule, they can never act inconsistently by enforcing it. If they change their decision, it is because the rule on which that decision was founded has been changed."

We will now discuss the 13th section of article 11, of the State Constitution:

The question here presented is not will this court reverse its own decision and follow that of the state court, for the reason that this court has never, in any manner, construed this section. It has never even been referred to by this court. In Webb vs. Lafayette County, 67 Mo., 353, the Supreme Court of Missouri decided emphatically that the act of March 23d, 1868, authorizing the issuance of the bonds sued on was in conflict with said section 13, and bonds issued under it consequently void, and as this court has never construed said section, it will, in accordance with an unbroken line of decisions, now when the section is presented for construction, follow the decision of the state court, as upon this point it cannot be contended that there are any conflicting decisions in the state or any other court.

FILLMORE BEALL.